

THE OPIOIDS EPIDEMIC: IMPLICATIONS FOR AMERICA'S WORKPLACES

JOINT HEARING BEFORE THE SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS AND THE SUBCOMMITTEE ON WORKFORCE PROTECTIONS OF THE COMMITTEE ON EDUCATION AND THE WORKFORCE U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

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THE OPIOIDS EPIDEMIC: IMPLICATIONS FOR AMERICA'S WORKPLACES

Thursday, February 15, 2018

House of Representatives

Committee on Education and the Workforce,

Subcommittee on Health, Employment, Labor, and Pensions

joint with the

Subcommittee on Workforce Protections

Washington, D.C.

The subcommittees met, pursuant to call, at 10:02 a.m., in Room 2175, Rayburn House Office Building. Hon. Tim Walberg [chairman of the Subcommittee on Health, Employment, Labor, and Pensions] presiding.

Present: Representatives Walberg, Byrne, Wilson of South Carolina, Rokita, Brat, Grothman, Stefanik, Allen, Lewis, Mitchell, Smucker, Ferguson, Estes, Handel, Sablan, Takano, Fudge, Bonamici, Adams, Blunt Rochester, Krishnamoorthi, and Shea-Porter.

Also Present: Representatives Foxx, Thompson, Guthrie, and Scott.

Staff Present: Marty Boughton, Deputy Press Secretary; Courtney Butcher, Director of Member Services and Coalitions; Michael Comer, Deputy Press Secretary; Rob Green, Director of Workforce Policy; Callie Harman, Professional Staff Member; Amy Raaf Jones, Director of Education and Human Resources Policy; Nancy Locke, Chief Clerk; John Martin, Workforce Policy Counsel; Kelley McNabb, Communications Director; Rachel Mondl, Professional Staff Member/Counsel; James Mullen, Director of Information Technology; Alexis Murray, Professional Staff Member; Krisann Pearce, General Counsel; Benjamin Ridder, Legislative Assistant; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Olivia Voslow, Legislative Assistant; Joseph Wheeler, Professional Staff Member; Lauren Williams, Professional Staff Member; Michael Woeste, Deputy Press Secretary; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Christine Godinez, Minority Labor Policy Associate; Carolyn Hughes, Minority Director Health Policy/Senior Labor Policy Advisor; Eunice Ikene, Minority Labor Policy Advisor; Stephanie Lalle, Minority Digital Press Secretary; Andre Lindsay, Office Assistant; Richard Miller, Minority Labor Policy Director; Jacque Mosely, Minority Director of Education Policy;

Udochi Onwubiko, Minority Labor Policy Counsel; and Veronique Pluiose, Minority Staff Director.

Chairman WALBERG. We welcome each of you to today's joint committee hearing of the Subcommittee on Health, Employment, Labor, and Pensions and the Subcommittee on Workforce Protections; a joint hearing today. I would like to thank our witnesses for joining us for this important discussion on how the opioid epidemic is impacting work places, workers, and family members from across the country.

Before I go on any further, I think it is important for a Committee that has responsibility for education and the workforce to not miss some of the current events that take place. To come this morning and to see this headline and these pictures of grieving parents, students, in this unbelievably evil killing of 17 in Florida. It is not something that we can pass or should pass up easily.

We are having this hearing because there is deep suffering in our communities relative to opioid heroin abuse, but there are other points of suffering as well. And we are earnestly looking for ways to deal with that suffering and pain that is so personal. But yesterday's tragic events in Parkland, Florida force us, I believe, to acknowledge once again that suffering and pain sometimes grip a community in the most shocking and unexpected ways. I have heard it said this morning and last night that thoughts and prayers are not enough. And they are not enough. I can understand why people would say that. But as someone who believes in prayer, who has seen its power over and over in my life, I know that any petition to the God who created us, the God whose heart is also broken, literally broken I am certain, when lives are ended in such a tragic and evil way, that these prayers are heard by Him.

And so I believe this morning we need to pray for those who are burdened by grief and loss and pain this morning. We need to pray for those who are fighting to stay alive, we need to pray for those who are now going to have to find a way to move forward. And we need to pray for each other. We need to pray for understanding, for wisdom, for grace. We need to pray for guidance on what we can do because we have to do something, but not just something, to do the right thing for our communities, for our families, for our lives, for our future, to stop the heartache before it happens, and, when we can, to help rebuild when the need arises.

So not desiring to offend in any way, and yet believing that we have a purpose that causes us to need higher counsel, I would ask you to allow me to pray.

I come to you, Father God, thanking You for wisdom that You can give, and I thank You that You care for us and You hurt when we hurt. And today I ask that You give wisdom to all in Florida, as well as here in this room as we deliberate on things to help and not hurt—that You give us wisdom beyond ourselves. To be with the families in Florida who are hurting right now, who have lost tragically young lives. We pray for the school, that wisdom will be given to its administration as they move forward, and ultimately we will find answers that will move us forward in this great country, to be a united nation working together. And I pray this in Your powerful name. Amen.

The tragic opioid epidemic has unfortunately become a major part of our national conversation and a problem that we must understand and address. Too many Americans from all walks of life—and I am sure everyone at these tables have experienced it in their district—with real live families and people that have suffered under the crushing impact of this terrifying epidemic and the abuse that goes with it. Far too many are dying from opioid misuse and overdose every day. According to the Centers for Disease Control and Prevention, opioid use, including prescription opioids, heroin, and fentanyl, was the cause of over 42,000 deaths in 2016, 40 percent of which involved a prescription. As policymakers, we need these statistics to inform what we do, but it is most important to remember that every casualty was a person with incredible potential. Not only were they members of our larger social communities, they were members of our work communities. Our coworkers see more of us during the average day than even our own families. The people we see in the workplace have a significant role in each of our lives and are part of the community around us. Many Americans work alongside those who suffer from opioid misuse, but may not understand what can be done to help their fellow coworker.

According to the National Council on Alcohol and Drug Dependence, 70 percent of the 14.8 million individuals that are misusing drugs, including opioids, are currently employed. While this statistic is alarming, it also shows the workplace can be a resource for the community to identify those who are struggling with opioid misuse. And we are already seeing some employers assisting employees in their treatment and rehabilitation, and how encouraging that is. Already, many employers have deemed it necessary to update or promote existing policies to provide support to employees who struggle with opioid abuse. In fact, 70 percent of U.S. companies and 90 percent of Fortune 500 companies have an employee assistance program to assist employees struggling with substance abuse and other problems. It is reassuring to see these kinds of programs and practices implemented by companies who want to see their employees healthy and productive. But more needs to be done. While much of the current dialogue is about the dangers of the opioid epidemic, we also need to hear about the proactive steps employers are taking to fight this epidemic within their workplaces and broader communities.

That brings us to today's discussion of how the opioid epidemic is impacting American workers and what some employers are doing to address this problem. We must understand that the federal government must not act as a barrier or tie the hands of employers when it comes to addressing opioid abuse and the workplace. Rather, we should fortify employers' efforts to help their employees and family members who are affected by this epidemic.

I look forward to hearing from our witnesses today and I thank Chairman Byrne for co-chairing this important joint committee hearing. And now recognize Ranking Member, and my good friend, Sablan, for his opening remarks.

[The statement of Chairman Walberg follows:]

**Prepared Statement of Hon. Tim Walberg, Chairman, Subcommittee on
Health, Employment, Labor, and Pensions**

Good morning, and welcome to today's joint subcommittee hearing with the Subcommittee on Workforce Protections. I'd like to thank our witnesses for joining us for this important

discussion on how the opioid epidemic is impacting workplaces, workers, and families across this country.

The tragic opioid epidemic has unfortunately become a major part of our national conversation, and a problem that we must understand and address.

Too many Americans – from all walks of life and from all parts of the country – are facing the terrifying realities of opioid abuse, and far too many are dying from opioid misuse and overdose every day.

According to the Centers for Disease Control and Prevention, opioid use (including prescription opioids, heroin, and fentanyl) was the cause of over 42,000 deaths in 2016, 40 percent of which involved a prescription.

As policymakers, we need these statistics to inform what we do. But it's most important to remember that every casualty was a person with incredible potential.

Not only were they members of our larger social communities, they were members of our work communities.

Our coworkers see more of us during the average day than even our own families. The people we see in the workplace have a significant role in each of our lives, and are part of the community around us.

Many Americans work alongside those who suffer from opioid misuse, but may not understand what can be done to help their fellow coworker.

According to the National Council on Alcohol and Drug Dependence, 70 percent of the 14.8 million individuals that are misusing drugs, including opioids, are currently employed.

While this statistic is alarming, it also shows the workplace can be a resource for the community to identify those who are struggling with opioid misuse. And, we are already seeing some employers assisting employees in their treatment and rehabilitation.

Already, many employers have deemed it necessary to update or promote existing policies to provide support to employees who struggle with opioid abuse.

In fact, 70 percent of U.S. companies and 90 percent of Fortune 500 companies have an employee assistance program to assist employees struggling with substance abuse and other problems.

It is reassuring to see these kinds of programs and practices implemented by companies who want to see their employees healthy and productive. But more needs to be done.

While much of the current dialog is about the dangers of the opioid epidemic, we also need to hear about the proactive steps employers are taking to fight this epidemic within their workplaces and the broader community.

That brings us to today's discussion of how the opioid epidemic is impacting American workers and what some employers are doing to address this problem.

We must understand that the federal government must not act as a barrier or tie the hands of employers when it comes to addressing opioid abuse and the workplace. Rather, we should fortify employers' efforts to help their employees and family members, who are affected by this epidemic.

I look forward to hearing from our witnesses today, and thank Chairman Byrne for co-chairing this important joint subcommittee hearing.

Mr. SABLON. Thank you very much, Mr. Chairman. Good morning, everyone. I would also like to associate myself with the prayer of the Chairman. Our hearts and prayers also go out to the victims, seven fatalities. It is tragic. And I couldn't help asking, so what is next, what is next? With all due respect, respectfully not being partisan, I would maybe consider that Congress would reconsider the plans and rather than cutting funding for mental health we should actually increase it so that those who need the help throughout our community, our country, would have access to mental health services and programs.

The opioid crisis has ravaged communities across the United States. It is no surprise that the impacts of the crisis are being felt

in the workplace by both workers and businesses. From workplace accidents and injuries, employees' absenteeism, low morale, and increasing lost productivity, our workplaces are experiencing the challenges of this epidemic. U.S. companies lose billions of dollars a year because of employees' drug and alcohol use and related problems. But it is the human toll that is the most devastating consequence of this epidemic.

We know that those with substance use disorders come from all walks of life. From our factories to our boardrooms, the health needs of our workforce should be a top priority. Sadly these needs have gone unmet and behavioral healthcare has been out of reach for many, particularly lower wage workers, racial and ethnic minorities, and other marginalized populations. The *Affordable Care Act* improved and expanded treatment for people with substance use disorders through Medicaid and private insurance, although not for the people of my district, the Northern Marianas, and the other areas. The law mandated substance use disorder treatment as part of essential health benefits and brought in parity requirements to ensure that behavioral health is covered at the same levels as other medical coverage. Further, insurance can no longer deny coverage to people with substance use disorders or mental health conditions. Maintaining these important gains is paramount in the response to this crisis. Attempts to roll back these advances by weakening consumer protections or cutting Medicaid will only take us backwards. Additional funding at the federal level to combat the crisis will be squandered if we do not provide access to health coverage and a safe place to live and work.

The President's new budget proposal is another missed opportunity to have a meaningful conversation about improving health in this country. Proposing to eliminate coverage and protection for millions of Americans is counterproductive, particularly during a crisis of this magnitude. Addressing the opioid epidemic requires a robust and coordinated approach. Efforts to prevent workplace injuries and illnesses are a critical step toward avoiding the prescription of opioids that initiates abuse.

We should examine all the impacts that substance use disorder has on families and all the tools we have to help, including expanding prevention efforts, focusing on the entire family, increasing access to treatment, and facilitating recovery. We need to support those in recovery and provide them with economic opportunity to reintegrate into the community. Addressing addiction through treatment instead of punishment and incarceration should be applied across the board to all communities.

It is encouraging that the community is taking time to discuss this issue and I am hopeful we can address it through increased funding for effective evidence based programs that help increase access, health coverage, and treatment. To help the workforce is key to help the economy.

I thank the witnesses for taking the time to testify today and I look forward to hearing from them. I thank the two chairmen of the two subcommittees, and also my colleague and Ranking Member Mark Takano of the Workforce Protections Subcommittee.

Thank you very much, Mr. Chairman. I yield back.

[The statement of Mr. Sablan follows:]

Prepared Statement of Hon. Gregorio Kilili Camacho Sablan, Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions

The opioid crisis has ravaged communities across the United States.

It is no surprise that the impacts of the crisis are being felt in the workplace – by both workers and businesses. From workplace accidents and injuries, employee absenteeism, low morale, and increased illness and lost productivity, our workplaces are experiencing the challenges of this epidemic. U.S. companies lose billions of dollars a year because of employees' drug and alcohol use and related problems. But it is the human toll that is the most devastating consequence of this epidemic.

We know that those with substance use disorders come from all walks of life. From our factories to our board rooms, the health needs of our workforce should be a top priority. Sadly, these needs have gone unmet and behavioral health care has been out of reach for many, particularly lower wage workers, racial and ethnic minorities and other marginalized populations.

The Affordable Care Act improved and expanded treatment for people with substance use disorders through Medicaid and private insurance. The law mandated substance use disorders treatment as part of "essential health benefits", and broadened parity requirements to ensure that behavioral health is covered at the same levels as other medical coverage. Further, insurers can no longer deny coverage to people with substance use disorders or mental health conditions.

Maintaining these important gains is paramount in the response to this crisis. Attempts to roll back these advances by weakening consumer protections or cutting Medicaid, will only take us backwards. Additional funding at the federal level to combat the crisis will be squandered if we do not provide access to health coverage and a safe place to live and work. The President's new budget proposal is another missed opportunity to have a meaningful conversation about improving health in this country. Proposing to eliminate coverage and protections for millions of Americans is counterproductive, particularly during a crisis of this magnitude.

Addressing the opioid epidemic requires a robust and coordinated approach. Efforts to prevent workplace injuries and illnesses are a critical step toward avoiding the prescription of opioids that initiates abuse. We should examine all the impacts that substance use disorder has on families and all the tools we have to help, including expanding prevention efforts, focusing on the entire family, increasing access to treatment, and facilitating recovery. We need to support those in recovery and provide them with economic opportunity to reintegrate into the community. Addressing addiction through treatment, instead of punishment and incarceration, should be applied across the board to all communities.

It's encouraging that the Committee is taking time to discuss this issue and I am hopeful that we can address it through increased funding for effective, evidence-based programs that help workers access health coverage and treatment. A healthy workforce is key to a healthy economy.

I thank the witnesses for taking the time to testify today and look forward to hearing from them. Thank you. I yield back my time to the chair.

Chairman WALBERG. I thank the gentleman. Pursuant to Committee Rule 7(c) all subcommittee members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will remain open for 14 days to allow statements, questions for the record, and other extraneous material referenced during the hearing to be submitted in the official hearing record.

It is now my pleasure to introduce our distinguished panel of witnesses. Mr. Corwin Rhyne is a senior health care analyst at the Altarum Institute's Sustainable Health Strategies Program, where he studies health spending. Welcome. Ms. Lisa Allen is the president and CEO of Ziegenfelder Company, which offers help to employees needing addiction assistance. Welcome. Dr. Christina M. Andrews, PhD, is an assistant professor at the University of South Carolina where she examines addiction screening and treatment in diverse Medicaid health home models. Welcome. Ms. Kathryn J. Russo is a principal at Jackson Lewis, where she is the practice

leader of the firm's Drug Testing and Substance Abuse Management Practice Group. Welcome.

And now I will ask our witnesses to raise your right hand. We will swear you in to the record.

[Witnesses sworn.]

Chairman WALBERG. Let the record reflect the witnesses answered in the affirmative.

Before I recognize each of you to provide your testimony let me briefly explain our lighting system. It is like the traffic lights. When it is green, keep on going. When it turns yellow, you have a minute remaining to wrap your comments as quickly as possible. When it turns red, finish as quickly as you can. We will have the same process for our members of the Committee and they will indeed have opportunity to let you expand on some things maybe even you didn't get to in your testimony. We have the written testimony from each of you as well.

And so without further ado, I will now recognize Mr. Rhyan for your five minutes of testimony.

TESTIMONY OF CORWIN RHYAN, MPP, SENIOR HEALTH CARE ANALYST, ALTARUM INSTITUTE

Mr. RHYAN. Thank you, and good morning. Subcommittee Chairmen Walberg and Byrne, Subcommittee Ranking Members Sablan and Takano, and distinguished members of the Committee, thank you for the invitation today to testify on the current state of the opioid epidemic and the direct impacts we have observed on employers and the workplace.

My name is Corwin Ryan; I am a senior health care policy analyst for Altarum, a nonprofit research and consulting institute headquartered in Ann Arbor, Michigan.

In our work, we estimate the total nationwide economic burden of the opioid crisis exceeded \$95 billion in 2016, including significant costs from losses in productivity and earnings, increased health care costs, and increased expenditures on criminal justice, child and family assistance, and education. Preliminary data for 2017 indicate this burden has continued to grow. The number of opioid-related overdose deaths in the 12 months prior to June 2017 were 20 percent higher than they were only a year before. If the epidemic continues to grow at its current rate, the total economic burden from 2017 through 2020 could exceed \$500 billion for the entire United States.

This epidemic impacts all parts of our society, but the combined impacts on households and the private sector account for the largest share of the societal burden and exceeded \$46 billion in 2016. This finding elevates the importance of employers, both as stakeholders directly impacted by the crisis, but also as potential leaders in preventing its spread and helping support treatment and recovery.

Through recent work in Lorain County, Ohio, we heard from community stakeholders about the local economic impacts this epidemic can cause. Employers there are acutely aware of the impacts of opioids and they expressed repeatedly that they are having difficulty finding qualified candidates who can pass a drug test to fill local job openings. They have responded in some cases by changing

their hiring and employment practices to increase the pool of potential employees. We have observed employers that are now more likely to consider candidates who have recovered or are recovering from a substance use disorder. They are also reconsidering zero-tolerance policies for existing employees and are working to help provide treatment and recovery services. In the most extreme cases, we have even heard employers express the desire to simply no longer drug test their employees. We would also expect that if employers continue to struggle to find qualified applicants that they will substitute for greater levels of automation and make larger capital investments.

Many employers are also taking significant steps to improve the availability of treatment and recovery services. These businesses should be applauded for their efforts, supported in pursuing better care for their employees, and empowered to find the best solutions for their specific situations. Ensuring access to high quality evidence based treatment and recovery services through an employer can prevent overdoses and deaths. Employers should be given the flexibility to design and implement interventions that fit their employee population needs and work within available community resources, provided that evidence based practices inform their actions.

Employers can also embrace their role as a key player in efforts to prevent future opioid abuses and addiction. They can offer prescription drug disposal sites and can work with insurers and third-party administrators to help cut unnecessary opioid prescriptions. When possible, employers should disseminate and share outcomes of their efforts to the broader employer community to help inform best practices.

Finally, employers can also support caregivers, co-workers, friends, and family members of those suffering from addiction. All will need flexibility and resources so they can guide individuals through treatment and recovery.

These Subcommittees should be applauded for their initiative to investigate the impacts of the opioid crisis on employers and the workforce. We have shown that employers are negatively impacted by the crisis, but can and will be at the forefront of implementing pivotal solutions to prevent and treat opioid addictions. Public policy should seek to give employers the resources they need to be an active and engaged ally in the fight against addiction, and allow them flexibility where needed to customize their responses. Including and empowering employers will go a long way toward accelerating the development and implementation of solutions to this nationwide epidemic.

Thank you for the opportunity to present today. I look forward to any questions you may have.

[The statement of Mr. Rhyan follows:]

Statement of Corwin Rhyan
on
“The Opioids Epidemic: Implications for America’s Workplaces”
U.S. House Committee on Education and the Workforce
Subcommittee on Health, Employment, Labor, and Pensions & Subcommittee on Workforce
Protections
February 15, 2018

Subcommittee Chairmen Walberg and Byrne, Subcommittee Ranking Members Sablan and Takano, and Distinguished Members of the Committee:

Thank you for the invitation today to testify on the current state of the opioid epidemic, the direct impact it is having on employers and workplaces, the actions we have observed employers taking to combat and mitigate its effects, and the further steps needed to address the crisis. My name is Corey Rhyan and I am a Senior Health Care Policy Analyst for Altarum, a non-profit research and consulting institute headquartered in Ann Arbor, MI. My testimony today is informed by our research estimating the economic impacts of the opioid crisis and our on-the-ground work with local communities to better understand and combat the far-reaching harms of opioid misuse and addiction.

The total economic burden of the opioid crisis exceeded \$95 billion dollars in 2016, including significant costs from losses in productivity and earnings, increased health care costs, and increased expenditures on criminal justice, child and family assistance, and education (see Figure 1).¹ The burden of this epidemic impacts all parts of our society including households and the private sector and federal, state and local governments (see Figure 2). Preliminary data for 2017 indicate this burden has continued to grow—the number of opioid-related overdose deaths in the 12 months prior to June 2017 were 20% higher than they were only a year before.² If this trend continues unchecked, we estimate the total cumulative economic burden from 2017 thru 2020 could exceed \$500 billion dollars for the entire United States (see Figures 3 and 4).

This burden includes impacts of both the misuse and abuse of prescription opioids and illicit drugs such as heroin. The increasing costs of the epidemic have resulted in part due to a rotation

¹ Rhyan, Corwin. (2017). The potential societal benefit of eliminating opioid overdoses, deaths, and substance use disorders exceeds \$95 billion per year. Altarum Research Brief. Retrieved from <https://altarum.org/about/news-and-events/burden-of-opioid-crisis-reached-95-billion-in-2016-private-sector-hit-hardest>. Accessed February 2018.

² Centers for Disease Control and Prevention. Provisional Drug Overdose Death Counts. Available from: <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>. Accessed February 2018.

from prescription opioid abuse to illicit (and far more deadly) drugs—in 2016 deaths from heroin overdoses and synthetic opioid overdoses, such as fentanyl and carfentanil, each exceeded the number of deaths from natural and semisynthetic opioids such as morphine and oxycodone.³ In the past natural and semisynthetic opioids resulted in the greatest number of overdose deaths. While public policies such as state prescription drug monitoring programs and dispensing limits have limited the availability of prescription opioids for misuse, the recent increase in deaths from heroin and synthetic variants has more than offset progress made in that area.

Costs associated with lost productivity (both forgone earnings resulting from overdose fatalities and non-fatal productivity losses for those suffering from a substance use disorder) were the largest component of the economic burden, exceeding \$56 billion in 2016. These were followed by increased health care costs (\$21.4 billion in 2016) which include the costs of opioid-related emergency department visits and hospitalizations and indirect health care costs associated with increased risks of HIV, Hepatitis B, Hepatitis C, Tuberculosis, and Neonatal Abstinence Syndrome. Finally, the economic burden of the epidemic includes increased public expenditures required to combat opioid misuse and addiction, including criminal justice costs, child and family assistance, and K-12 education expenditures.

Notably, the combined impacts on individuals, households, and the private sector account for the largest share of the societal burden. Driven by premature loss of life due to fatal overdoses, decreased productivity and labor force participation for those suffering from opioid substance-use disorders, and increased health care costs borne by private insurance plans, the cost to individuals and the private sector exceeded \$46 billion dollars in 2016. While this cost is the combined burden on both employers and households, this finding elevates the importance of employers as key stakeholders who have both been directly impacted by the crisis, but also can play a key role in preventing its spread, helping provide treatment and recovery services for those who need it, and mitigating the long-term economic and societal harms.

Thru recent work in Lorain County, Ohio, a medium-sized county just west of Cleveland, we heard from community stakeholders in structured interviews and focus groups about the local

³ Hedegaard, Holly, Warner, Margaret, Miniño. (2017). NCHS Data Brief, No. 294: Drug Overdose Deaths in the United States, 1999-2016. Centers for Disease Control and Prevention. <https://www.cdc.gov/nchs/products/databriefs/db294.htm>. Accessed February 2018.

economic impacts this epidemic can cause. Lorain County had an opioid overdose fatality rate that was 2.5 times the national average in 2016.⁴ Employers there are acutely aware of the impacts of opioids and stakeholders expressed repeatedly that businesses have difficulty finding qualified candidates who can pass a drug test to fill local job openings. Furthermore, employers in Lorain County are concerned about lost productivity on the job, increased health care costs, and workplace accidents caused by employee drug use and substance use disorders. These impacts compound into broader economic harms, including perceived effects of decreased property values and a reduced tax base for local communities.⁵

Finding and retaining qualified applicants is a top employer concern nationally. The current economic recovery and expansion has created over 16 million jobs since the lowest point of the 2008 recession and the unemployment rate has fallen to 4.1%.⁶ However, the current labor market also creates difficulties for employers looking to hire to expand their businesses and meet demand for their products. In July 2009 there were 6.6 unemployed individuals for each job opening, in December of last year this number fell to 1.1 individuals per job opening.⁷ The lack of qualified applicants is driven by multiple factors including a retiring baby boom generation, but in communities suffering from high rates of drug use and addiction, these factors undoubtedly play a role in the shortage of available workers.

Employers have responded to the opioid and addiction crisis by changing their hiring and employment practices to increase the pool of potential employees. Thru our research in Lorain County, OH and subsequent collection of national labor market and employment trends, we have observed employers that are now more likely to consider candidates who have recovered or are recovering from a substance use disorder. Employers are also reconsidering zero-tolerance policies for existing employees and rather than immediate dismissal are working to help provide treatment and recovery services. In the most extreme cases, we have heard employers express a desire to simply no longer drug test candidates for certain positions, knowing that the need for a worker outweighs the risks of forgoing previous company policies. We would also expect if

⁴ Centers for Disease Control and Prevention. Underlying Cause of Death Mortality Data. Available from: <https://wonder.cdc.gov/>.

⁵ Altarum Institute. (2017). Community Assessment of the Opioid Crisis in Lorain County, Ohio.

⁶ Bureau of Labor Statistics. Employment Situation Data. Available from:

<https://www.bls.gov/news.release/empsit.toc.htm>.

⁷ Bureau of Labor Statistics. Number of unemployed persons per job opening, seasonally adjusted. Available from: <https://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm#>.

employers continue to struggle to find qualified applicants that they will substitute for greater levels of automation when possible and increase investments in capital that obviate the need for human labor.

Many employers are also taking significant steps to improve the treatment and recovery services offered to their workers suffering from substance misuse or substance use disorders. These businesses should be applauded for their efforts, supported in pursuing better care for their employees, and empowered to find the best solutions for their specific situations. In most cases employers are the primary provider of health insurance for their workers and ensuring that individuals have access to high-quality, evidence-based treatment and recovery services within their communities can offer a first line of defense against serious adverse outcomes like overdoses or death. The sooner substance use problems can be identified and treated, the greater the likelihood an individual can achieve recovery.

Employers should also consider implementing value-based insurance design principles in ways that remove financial barriers to treatment and recovery programs for their enrollees. They should work to engage and collaborate with experts, health care providers, and local treatment and recovery resources. They should be given the flexibility to design and implement interventions that fit their employee population needs and the available community resources, provided that evidence-based practices inform their actions.

Employers can also embrace their role as a key player in efforts to prevent future opioid abuses and addiction. They can offer prescription drug disposal sites for their employees and can work with insurers and third-party administrators to help cut unnecessary opioid prescriptions. They can explore higher financial barriers to accessing opioids by adjusting drug tiers with benefit managers and work to identify high-frequency providers. Additionally, they can ensure alternatives to opioids for managing chronic pain are encouraged through improved insurance design and that mental illness and behavioral health services are covered as these untreated conditions can be precursors to opioid misuse. Finally, employers can be educators and information disseminators for both providers and employees about the risks of opioids and alternatives to pain management. Employers should be empowered to find the right mix of solutions to fit their worker populations and when possible disseminate and share outcomes of their efforts with the broader employer community to help inform best practices.

Finally, employers should recognize that it is not only those with or at-risk for substance use disorders who need support during this epidemic. Caregivers, coworkers, friends, and family members all need flexibility and resources so they can help guide individuals through treatment and recovery. In Lorain County, we heard stories from friends and family members of those suffering from addiction including siblings, parents, and grandparents, many of whom put their own lives on hold to help guide a loved one through the many stages of the recovery process. Where possible, employers should work to support these individuals as they give their own time and effort to help others in the community recover from an opioid substance use disorder.

These subcommittees should be applauded for their initiative to investigate the impacts of the opioid crisis on employers and the workforce. Our work has demonstrated that employers, households, and the private sector all face a substantial economic burden from the opioid crisis and that this burden can be expected to grow if effective, evidence-based approaches are not taken immediately to address this crisis. Moreover, our analyses of the economic burden of the current crisis can only begin to capture the total societal harms opioid misuse and addiction. In fact, the monetized impacts of the crisis like lost wages and increased health care costs are only a small part of the story—the emotional burdens of use, the disparate community impacts, and the loss of family and community members to overdoses are just as important to consider, although not measured in our work to date.

We have also shown that employers can and will be at the forefront of implementing pivotal solutions to prevent future opioid addictions, treat those with substance use disorders, and helping individuals achieve recovery. Public policies should seek to give employers the resources they need to be an active and engaged ally in the fight against addiction and allow them the flexibility where needed to customize approaches to combat this crisis. Solutions to this epidemic will come through a combination prevention, treatment, and recovery activities and will be supported by a wide variety of stakeholders. Including and empowering employers will go a long way towards accelerating the development and implementation of solutions to this nationwide epidemic.

Thank you for the opportunity to present today, I look forward to any questions you may have.

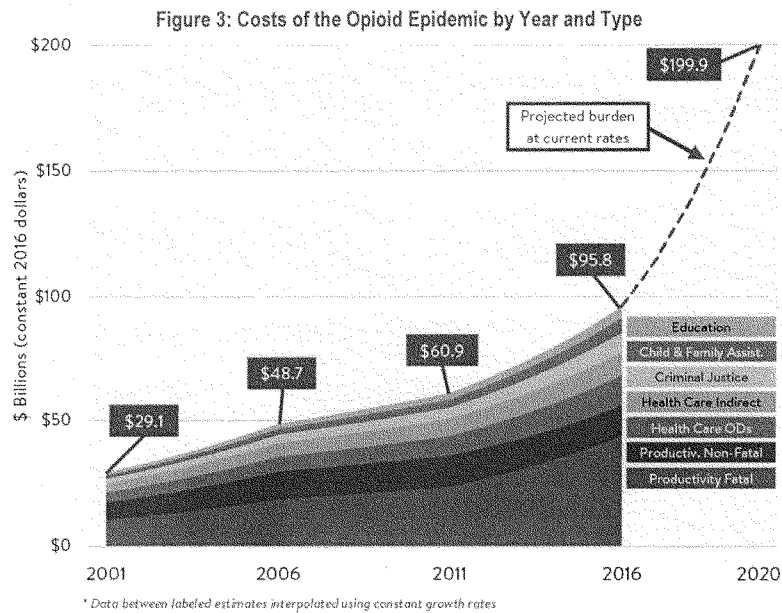
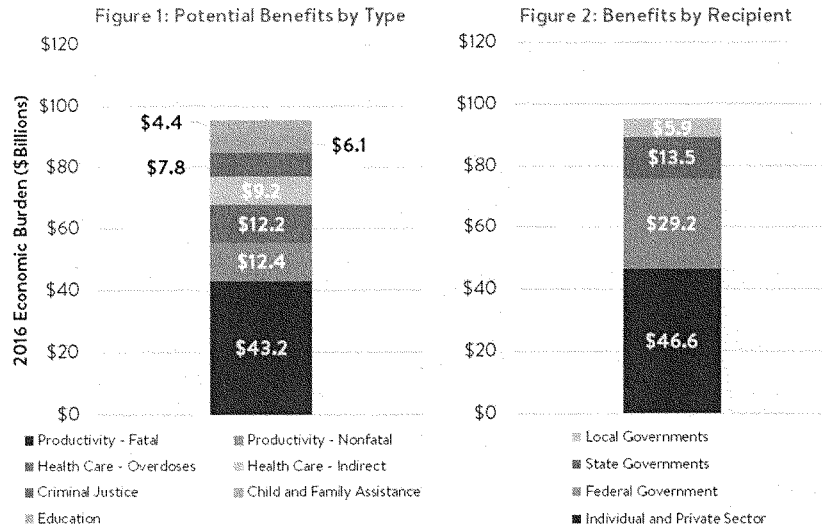
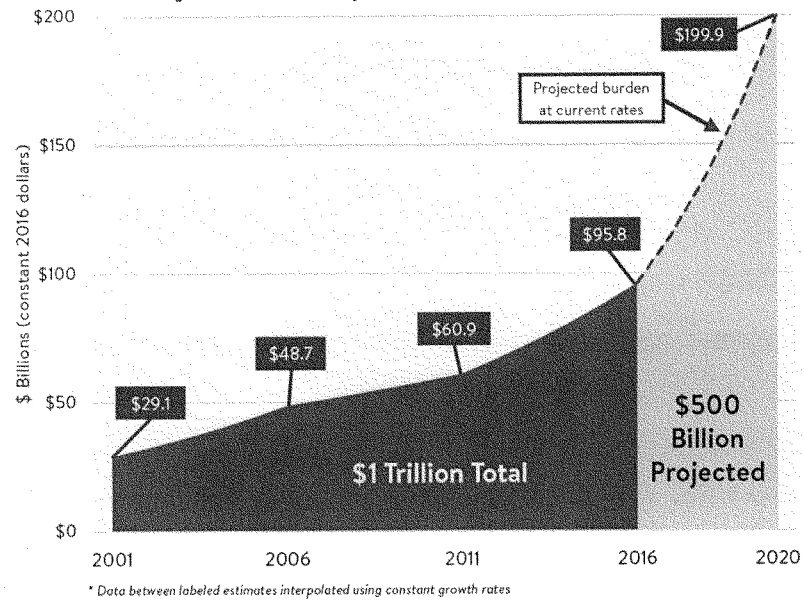


Figure 4: Total and Projected Costs of the Opioid Epidemic



Chairman WALBERG. Thank you. I recognize Ms. Allen for your five minutes of testimony. Welcome.

**TESTIMONY OF LISA ALLEN, PRESIDENT & CEO,
ZIEGENFELDER COMPANY**

Ms. ALLEN. Thank you. Chairmen Walberg and Byrne, Ranking Members Takano and Sablan, and distinguished members of the Subcommittee, thank you for inviting me to testify before you today.

I am here today to talk about our efforts to employ in our commitment as a company to help individuals rebuild their lives. My name is Lisa Allen and I am the president and CEO of the Ziegenfelder Company, a privately held, family-owned business located in Wheeling, West Virginia. We make people smile with really cool treats and manufacture twin pops and other frozen items. I am honored to speak to you today on behalf of the U.S. Chamber of Commerce.

A quick snapshot of our company. In 1860, Ziegenfelder started out as a neighborhood candy store located just across the street from where we are located today. My grandfather, Abe Lando, began working for the company after World War II and in 1960 my family fully purchased the company. Although the company struggled financially for years, my father was able to turn the business around by developing Budget Saver twin pops. By reducing the expenses associated with the dairy industry and packaging the product in clear bags rather than traditional boxes, we were able to invest more in the company. Now, with three manufacturing facilities operating 24 hours a day, seven days a week, we make nearly 2.5 million twin pops every 24 hours. Today, our products are in grocery stores nationwide in nearly every community across the country. Last year, we proudly placed over 40 million bags of pops in homes across America.

While we are proud of this recent growth, the source of my pride comes from our team of employees we call a tribe. We call ourselves a tribe because we are individuals, families, and a community linked by our culture and our bright, vivid vision. And let me be clear, our growth has been possible because of our awesome tribe, which has grown from 65 to over 300 tribe members across the country.

All members of our Ziggy tribe benefit from committed, compassionate hiring practices, which we expanded several years ago. These practices developed out of a realization following a chance conversation with a friend of mine from the U.S. District Attorney's Office. Apparently we had hired some of our tribe from a local halfway house, individuals who were in the midst of rebuilding their lives. After realizing this, we chose to become more intentional with respect to hiring specific populations, such as reentering citizens, veterans, and the homeless; all or none of whom could include recovering drug addicts, many of whom are in the throes of the opioid addiction.

As I am sure other witnesses have said before, I have a lot to say on this topic at hand. There are many stories of how our tribe members have been directly and indirectly impacted by the opioid crisis, some of which I have detailed in my written testimony. Per-

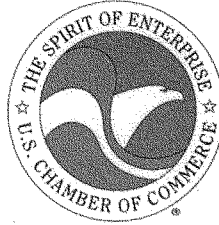
haps the best way to tell our story in the five minutes I have is to share with you one of the many stories. One of our most valued tribe member leaders is Sonny Baxter. The day after he came home in August of 2015, he joined our tribe. We didn't know then about his time before joining our trip, nor did we know how much more he would achieve afterwards. It turns out he came home after a 10 year prison sentence after his arrest at age 19 for possession with intent to distribute. While he was serving his sentence, he studied coding and training to become an addiction counselor in the hopes of helping others. In Sonny's words, "I was part of the problem," and now he is part of the solution. During the two and a half years he has worked as a full-time member of our tribe, Sonny earned his associate's degree in software engineering from West Virginia Northern Community College just this past December. He recently applied to the Organizational Leadership Program at West Liberty University and is not only a full-time employee with us and the lead operator, he also works as a tech support at Wheeling Jesuit University. He has purchased a condo, he has a car, and he is using his training to help other members of our tribe who are recovering and reentering the workforce. With his help, our culture has become self-perpetuating. We believe that a job is absolutely the best antidote.

Another of our tribe leaders, Tanner Defilbaugh, who also rebuilt his life following opioid addiction and incarceration, articulates it so well, "It's easier to do the right thing when you are working and you have a steady job and you have a purpose." It is an honor to be part of such a tremendous group of people and humbling to think of some of the challenges that they and other members of our community and nation have endured and overcome.

It sounds corny, but I think of the starfish parable. There are thousands of people that are in need of help in communities across this great nation. It's hard to help them all. But to each person that we're able to help, we make a difference. I truly believe, one by one, we are making a difference.

Thank you for this opportunity to testify and I look forward to your questions.

[The statement of Ms. Allen follows:]



Statement of the U.S. Chamber of Commerce

ON: "The Opioids Epidemic: Implications for America's
Workplaces"

TO: THE HOUSE COMMITTEE ON EDUCATION AND THE
WORKFORCE'S SUBCOMMITTEE ON HEALTH,
EMPLOYMENT, LABOR AND PENSIONS AND
SUBCOMMITTEE ON WORKFORCE PROTECTIONS

DATE: February 15, 2018

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Statement on
“The Opioids Epidemic: Implications for America’s Workplaces”
Submitted to
THE HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE’S
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS
AND SUBCOMMITTEE ON WORKFORCE PROTECTIONS
on behalf of the
U.S. CHAMBER OF COMMERCE
By
Lisa Allen
President & CEO
Ziegenfelder Company
Wheeling, West Virginia
February 15, 2018

Chairmen Walberg and Byrne, Ranking Members Takano and Sablan and distinguished members of the Subcommittees, thank you for inviting me to testify before you today about our company and our employees. I hope that my testimony and remarks will help provide a glimpse into our compassionate hiring practices and our company’s culture of dedication to our employees, their families and our communities. More importantly, I hope that by sharing our story I can provide a model for others to follow that will help make a dent in this terrible epidemic.

My name is Lisa Allen. I am the President and CEO of Ziegenfelder Company, a privately-held, family owned business located in Wheeling, West Virginia; we “make people smile with really cool treats” manufacturing twin pops and other frozen items. I am honored to speak with you today on behalf of the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. As you might know, more than 96 percent of the Chamber’s members are small businesses with 100 or fewer employees, and 70 percent of which have 10 or fewer employees. For 100+ years we were one of those businesses until 17 years ago.

Our Company's Background

Originally, the Ziegenfelder Company was a neighborhood candy store dating back to the 1860s just across the street from where we are today in Wheeling. The Ziegenfelder family expanded their business by entering the ice cream manufacturing world in 1922. My roots at Ziegenfelder run deep and date back to when my grandfather, Abe Lando, began working for the company after World War I. My grandfather, a sweet, kind, hard-working family man, had spent his young life in the coal mines and steel mills of our Ohio Valley area, devoted to my grandmother, my father and my aunt. Finding work then was difficult, yet thankfully the Ziegenfelder family saw potential in him.

My grandfather found a work-home at Ziegenfelder and began impacting the business with his sales and leadership skills, eventually earning the opportunity for ownership in the business. Several decades later, in the 1960s, my family fully purchased the company. They were excited about the opportunity; they put in long hours and invested all they had in the business, over and over, and over again. In those times and frankly still today, the dairy manufacturing business was very competitive. There were dairies everywhere up and down the Ohio River Valley selling ice cream and novelties to mom/pop grocery stores and restaurants throughout West Virginia and eastern Ohio. Naturally, (and not unlike today) larger companies with greater resources were better equipped to meet market needs faster, including buying machines to automate the work that my father and grandfather used to do by hand. My family invested where they could but businesses with far more resources and financial assets were able to invest in market share and equipment that could boost production.

Nearing bankruptcy during the struggling economy of the 1980's, Ziegenfelder developed the brand Budget Saver twin pops with the intent of servicing consumers in a difficult economy

with an affordable, great tasting product. One of the ways we differentiated our product came from an idea my mom had. She used to complain because my four brothers and sisters and I would bring our entire neighborhood into the house and open numerous boxes of popsicles at the same time because we each wanted a different flavor! She told my dad – “You should put a whole bunch of different flavored popsicles together in the same bag, saving space and craziness in my freezer!” Always a trusted advisor to my father, he followed her suggestion and Budget \$aver twin pops were born!

My father knew the chances of new brand entry into the grocery market was a long shot, yet he also knew that focusing on the consumer might be his competitive advantage. He developed a unique sugar blend, excellent flavor profiles and a see-through package; designed to retail at a very affordable price. And it did.

Soon the company sold its dairy lines and focused exclusively on these popsicles. By reducing the expenses associated with the dairy ingredients, and packaging the product in clear bags rather than traditional boxes, he began turning the financial outlook for the company around. Clear plastic bags that featured a rainbow assortment of pops, sold at an affordable price that customers and parents, like my mom, loved.

Since 2001, Ziegenfelder has averaged 12% year-over-year organic growth in a grocery category that has been flat to declining, making Budget \$aver products a steady market disrupter over time. We began supplying Budget \$aver brand pops to Walmart in 1992 when they had just 16 supercenters in Oklahoma, Arkansas, and Texas.¹ Other early retail customers included Giant Eagle, Shop’n Save, Dollar General, Food Lion, and HEB in Texas. Demand for our products has been supported by operational growth; we added production and storage facilities in Wheeling WV,

¹ <https://www.youtube.com/watch?v=hUmUUyzgkGU>

and purchased “similar use” facilities for our operation in Chino, CA and Denver, Colorado. Now with three manufacturing facilities operating 24 hours a day, 7 days a week producing water ice products for grocery retailers nationwide, we make nearly 2.5 million twin pops every 24 hours. Today, Budget Saver products can be found in grocery stores nationwide and in nearly every community across the country. Last year, we proudly placed over 40 million bags of pops into homes across America.

While we are proud of this growth operationally and financially, the source of my pride really comes from our team – we are a Tribe. We call ourselves a Tribe because we are individuals, families, and a community linked by our culture, and our bright, vivid vision. And let me be clear, our market and operational growth has been possible because of our awesome Tribe, which has grown from 65 to over 300 Tribe members across the country. We know our company success is because of our committed, caring, hardworking Tribe. With our Vivid Vision of “growing together, revolutionizing our company, and bringing smiles to every home in America” and our mission to “make people smile with really cool,” we know we are serving our consumers and evolving our diverse Tribe and our caring culture in unique ways. Our business continues to expand and our Tribe continues to grow as we continue to bring our twin pops to every home in America.

One of our competitive advantages has always been our low-cost business model, referred to as our Zieggy economy. Remembering our original mission of meeting the needs of all consumers for a low-cost frozen treat, we remain true to our mission. Low retail pricing begins with our own disciplined business practices and our commitment to the millions of consumers who are unable to afford expensive ice cream and other treats. Today, as in the past, Budget Saver products can be produced, sold, distributed, and placed on retail shelves for under \$2.00. That’s important to our consumers and to our Tribe.

*Our Tribe & Our Commitment
to Workforce Diversity and Compassionate Hiring Practices*

All members of our Zieggy Tribe benefit from committed, compassionate hiring practices, which were expanded several years ago and have facilitated our diverse open-minded tapestry of loyal, hardworking people committed to our vision and mission. Perhaps part of how we came to focus on these hiring practices developed as an outgrowth of our company's history and culture of commitment to our employees and our communities. Perhaps part of it developed as a result of where we are located and the impact of the national opioid epidemic on our particular communities. The truth is that it most directly developed out of realization following a chance conversation with a friend from the U.S. District Attorney's office: apparently, we had hired some of our Tribe from a local half-way house – individuals who were in the midst of rebuilding their lives.

Once we learned the backgrounds of many of our entry level employees, we chose to become receptive and intentional with specific populations such as re-entering citizens, veterans, and the homeless; all or none of whom could include recovering drug addicts. We have always wanted to hire people who are willing to commit to the company and reflect the commitment that we are making to them. People with many different experiences and backgrounds have been willing to commit to our company and we remain committed to them.

Anyone dedicated to living what we call our Zieggy Essentials is welcome to join our family. All you have to do is pledge to keep our TWINS principles in mind at all time. THINK Tribe first! WIN by always doing the right thing! INSPIRE each other! NURTURE our Zieggy Economy! SERVE others putting safety first! Our TWIN principles will produce a future brightened by inspiring people, creating smiles, and impacting lives.

Our Commitment to Our Tribe: How We Help Those in Trouble

In addition to our compassionate hiring practices, Ziegenfelder and our Tribe work hard to foster an emotionally and socially safe environment where our Tribe members have a place to recover and prosper. We feel validated by the fact that when our employees are in trouble, they come to many of us including our leaders and ask for help. When our Tribe is hurting, we're hurting too. As you know, the complexities of the "opioid epidemic" are far-reaching, eventually resulting in family and community disintegration, imprisonment, and/or death.

We've begun to develop loosely structured peer groups in our Tribe who recognize potential problems and work together to help each other. We work with local counselors, social service agencies, our medical community, law enforcement and Federal and local Parole Officers on a case-by-case basis working to help people get assistance. We've learned from and shared best practices with other businesses such as Butterball Farms in Grand Rapids, MI, who commits to re-entry initiatives and returning citizens. Butterball Farms has assisted us in searching for and developing wrap-around services for our Tribe. They have created a non-profit organization called THE SOURCE, in partnership with DHHR and other businesses in Grand Rapids to assist partner companies' employees with needed services and assistance. Navigating the networks of assistance - whether it be health care or health insurance, bill payments, educational needs for children, auto repair, counseling services or government assistance needs - can be challenging for just about anyone. These confidential services have proven to reduce absenteeism and turnover and increased trust and commitment to Butterball Farms and to Ziegenfelder in our early stages of success. These issues are complex, and much bigger than our little company, we know this. That is why we are open and continuously in search of ideas, resources, and best practices to improve our processes.

While we are compassionate and have open hearts, we are not foolish – we have employees and a business to run. We are grateful that the majority of our employees are also committed to protecting the business and each other. We are part of a close knit community where people look out for each other and many have known one another for a long time.

Roughly one-third of our workforce has been with us for 10 years or more. This portion of our Tribe is hard working and has never “been in trouble.” They are well trained and committed. Another third of our Tribe comes to us following what some would call a “checkered past.” Some of the Tribe members have made bad decisions in the past, but they come to work with us as they rebuild their lives and they succeed in staying on a positive, self-aware, and well-lived life. Then we have those people that seem to be in everybody’s workforce: people that may be in the middle of something not good, spiraling downward, but they haven’t gotten caught. We are committed to creating and maintaining a safe environment, one that is socially and emotionally safe – and trusting, where people feel safe being vulnerable and can grow. We hope that this environment and culture can help support and reward those of our Zieggy population who truly are in it to win it.

Stories from Our Tribe

One of our most valued Tribe members is Sonny Baxter. We have an amazing video about his story that we are honored to highlight on our website. As he says in this video, he has been home since August of 2015.² The day after he came home, he joined our Tribe. We didn’t know then what he has since shared with us, nor did we know then what more he would go on to achieve.

Turns out when he came home, it was following a ten year prison sentence that he served by spending seven years in federal prison and three years in state prison. When he was 16 years old he started to get into “different things” as he puts it and skipping school more and more. When he was

² <https://www.budgetsaver.com/employment/sonnys-story/106>

19 years old, he was arrested for possession of drugs with intent to distribute and sent to prison in the state of New Jersey. While he was serving his sentence, he trained to become an addiction counselor in the hopes of helping others. In his words, “I was part of the problem.” Now he is part of the solution. He said, “I was told a long time ago the things you learn are not yours to keep and I place that responsibility on myself.” What we know now is that he is headed to West Liberty University after earning his associate’s degree in software engineering from West Virginia Northern Community College. He is a full-time leader at our company and works as a Tech Support at Wheeling Jesuit University. He has a condo and a car and he uses his training to help other members of the Tribe who are in recovery and re-entering the workforce. He has been a huge asset to our culture, our Tribe, and our community. His story is one of success and there are many others.

Another story that not only exemplifies our workplace culture but also touches on the many elements of addiction is one involving theft and restitution. Opioid addiction becomes expensive; drug use often leads to criminal behavior. We know from the stories our Tribe members share that a lot of drug addicts, including those with a history of opioid misuse, end up in jail because of the criminal behavior that they engage in to support their addiction.

One early morning I came into the plant and saw three employees huddled around a video monitor. I asked them what was up. These three guys, who had a prior history of drug addiction and criminal activity, were talking and watching the video footage from the night-turn shift. They told me that an employee in our factory had her wallet stolen. I asked them how they thought we should handle the situation. It was their idea to go and speak with the individual on the monitor who took the wallet—employee to employee— as people who had walked that path in the past. When confronted by peers, the individual first denied and then admitted his actions. He apologized to the owner (a suggestion by the peers) gave the wallet back and remains a valued member of our tribe to

this day. However, had supervisors or managers confronted him, I truly believe the outcome would have been different – he would have been nervous, frightened, and defensive. I am not sure whether he would have been able to change his path. By creating a trusting environment – we were able to keep him employed, which is really the first step in cleaning up a life.

The story of another one of our Tribe members speaks to the value of employment and culture too. One of our Tribe members Tanner's past started out a lot like many people but devolved quickly with addiction. Tanner played varsity baseball in high school and graduated with good grades. He went to college on a baseball scholarship but, like many kids, he partied a little too much. He ended up quitting school, and got caught up in the spiral of addiction. He was sent to prison for two years for breaking and entering. While Tanner was in prison, his mother developed cancer and passed away - never seeing her son's abilities to put addiction in his past, to work hard, and to develop a meaningful live. After release and while in drug court, he met his fiancé – who had a difficult background as well. Tanner struggled to find a full time job. He was delivering pizzas and happened to deliver a pizza to our plant. The folks at the plant told him what a great steady job they had and told him to come work with us. Now, he is the highest level hourly employee that we have, and he and his fiancé have three children; he has developed leadership skills and has a bright future. Our Tribe saw in him someone who was looking to make a better future for himself and he has since helped many of our employees. One such Tribe member whom Tanner has helped is Charles.

Charles had an addiction problem in the past as well prior to working for us. Much like others, he got clean and he found us through friends of Tanner's. He began working for us while on parole. As a father with full-custody of his two-year-old daughter, he tried to steer clear of other addicts that might pull him back to that life. One of his parole stipulations was that he cannot see

his ex-girlfriend who was the mother of his child. Despite his every effort to steer clear and fulfill the terms of his parole, the mother of his child called him incessantly and hammered on him. He went and met her and was caught and sent back to jail for violating the terms of his parole. When Charles was sent back to prison, Tanner and his fiancé took Charles's son into their home with their three children. For Charles, two weeks turned into 30 days. We tried to stay in touch with Charles because he was our employee and he really had no one else. When he finally got a court appointed attorney, we contacted the attorney and offered to stand up at his hearing as a character witness. Our plant manager stood up for him at this hearing; he was released that day and continues to work for us now. Charles reunited with his two-year-old as a parent and a full-time employed caregiver.

There are so many stories of peer-to-peer support that I am not even aware of – but these are two that I am honored to share. In addition, we have conversations within our community and leverage these relationships to help our Tribe.

For example, Reynolds Memorial Hospital is a local regional hospital and the CEO Dr. David Hess is a friend of mine. He has people coming and going in and out of his hospital and Emergency Room due to drug use. He went to his board and implored that someone take the lead. What is step one? Getting people off of drugs. However, many places won't take people if they have drugs, including opioids, in their system. He has developed the "Break Through" program. He has a small staff of three employees, two nurses and an administrator who treat anywhere from two to ten patients per week inpatient for between two and four days. He and his small team monitor these patients very closely on an inpatient basis and help them manage the symptoms of withdrawal with medical protocol. They work with a medical management company who helps them stay current with medical trends. They help them through the physical trauma of

detoxing and withdrawal. Dr. Hess has told me that if any of our Tribe needs help, he will get the assistance they need – this is an example of our community partnership.

Unfortunately, we know this is a crisis and not all outcomes are successes. In fact, successes are often fleeting. Nearly one year ago, 25-year-old Trevor came to us clean from the Federal Prison system. Through our community relationships, Trevor's Parole Officer recommended him to us. Trevor was a great asset to our company, working hard both at work and to stay clean... for about 10 months. We noticed changes in Trevor's behaviors and confronted him multiple times. At one point Trevor, along with his beautiful 4-year-old son, sat in our plant manager's office as they discussed his slippery slope of addiction and all that was at stake for Trevor. Efforts to assist Trevor through working with his PO, professional counseling services, and ongoing peer assistance were not enough to combat the evil draw of addiction and its overpowering effects. Trevor returned to the streets and quickly found himself locked up again.

Bottom line, we are not experts in this arena. We make popsicles. We do, however recognize our responsibility as a steward of our tribe and our community to do what we can to change the trajectory of this epidemic. It is a messy process, wrought with failures and heartbreak. Our efforts are likely not as process oriented or results driven as they could be. I wish we could devote more resources to defined solutions, and continue inching forward. Connecting the dots of care for these marginalized millions of people addicted to opioids is not easy, and there are more starfish on the shore than we could ever manage. In our little world, we are doing what we can with the hopes of making a difference in a life, one person at a time.

Our Culture Has Become Self-Perpetuating

Diversity is our strength and our competitive advantage. With open minds and open hearts, we recognize many people have capabilities and a need to be part of success and something bigger

than themselves. These could be our children, our friends, our neighbors, our co-workers; all the fabric of our community. People who have so much to contribute yet may have made decisions, changing the course of their lives.

Standing idle, often in judgement of others, and doing little but measuring statistics does not erase mistakes people have made. Even worse, it may perpetuate crime and other debilitating problems. We believe and have found that for many of our Tribe members, a job is the best antidote. And this belief has been affirmed over and over again by our Tribe members. Tanner Defilbaugh articulated it so well: “When you work somewhere like this it makes it easier to do the right things when you are working and you have a steady job and you have a purpose. If you’re just waning in the wind and you can’t get a job, you’re just gonna say to heck with it – I might as well do what I was doing and that’s how a lot of people end up doing the same thing all over again.”³

We recognize that there’s a huge opioid epidemic so what we have done is come together and figure out a solution to it versus continue to be or foster the problem. We have opened our doors to a certain extent to give people the opportunity to become better. It takes courage to stand up and make change. It takes courage to believe in the resiliency of the human spirit, and it *requires* courage to take the first step. We have and will continue to embrace the opportunity to demonstrate and reward this courage. Our results are not without failures. However, we learn from our failures and believe that the next person deserves our open minds and open hearts as much as the last individual.

Conclusion

³ <https://www.facebook.com/100DaysInAppalachia/videos/1727196020685199/>

I am proud of the company that my grandfather and dad invested in years ago and I am proud of the Tribe that continues to build our company today. It is an honor to be a part of such a tremendous group of people and humbling to think of some of the challenges they and other members of our community and nation have endured and overcome.

Their successes and our intentional and compassionate hiring practices have enabled us to share our story in many open forums, including this experience today. Ziegenfelder's Tribe's efforts have stretched into our community, generating renewed energy in our slowly recovering local economy. Working with leaders in education, business, medicine, local government, the U.S. Department of Justice, and the Board of Prisons, we are partnering to reach our community in unique ways. Drug addiction, including opioid addiction, and associated social problems have been smoldering for generations and it may take as long to win this battle. In our communities in Wheeling, Chino CA and Denver, CO and at the Ziegenfelder Company, we are working together to combat this enemy; one person, one family and one community at a time. Just like starfish on the beach, there are thousands of people that need help in our communities across this great nation, but to each person we are able to help, we make a difference. One by one we are making a difference.

Thank you for this opportunity to testify, and I look forward to your questions.

Chairman WALBERG. Thank you for your testimony. And I guess I should say I thank you for addicting my grandkids to twin pops. (Laughter)

Ms. ALLEN. And I thank you for purchasing them, sir.

Chairman WALBERG. It is a better addiction than anything else.

Ms. ALLEN. Absolutely. Have at it.

Chairman WALBERG. Okay.

Ms. ALLEN. Thank you.

Chairman WALBERG. And I will recognize Dr. Andrews for your five minutes of testimony.

**TESTIMONY OF CHRISTINA M. ANDREWS, PHD, ASSISTANT
PROFESSOR, UNIVERSITY OF SOUTH CAROLINA**

Dr. ANDREWS. Subcommittee Chairmen Walberg and Byrne, Ranking Members Sablan and Takano, and distinguished members of the Committee, thank you for the opportunity to speak with you.

I am a professor at the University of South Carolina and have spent the past decade researching how we can improve access to opioid use disorder treatment in the United States. Without question, the opioid epidemic is having a profound impact on our nation. We are now losing more people to opioid overdose than to AIDS in the height of that epidemic. And we will have lost 10 Americans to a fatal opioid overdose by the conclusion of this hearing today.

The human cost of addiction and overdose is accompanied by a substantial financial price. In 2013 alone, expenses related to opioid use were estimated to be \$79 billion. The epidemic presents new challenges for our economy. Reports from employers across the country tell a similar tale, opioid misuse is impairing their ability to hire and retain qualified workers. The Fed recently identified the epidemic as an emerging threat to economic growth. In its "Beige Book: A Summary of Regional Economic Conditions," officials point to a concerning number of employers who are reporting difficulty finding qualified employees who are drug free.

The research indicates a strong link between opioids and labor force participation. More prescriptions, more unemployment. The proportion of prime age men in the workforce has reached a historic low. Among those age 25–54 who are unemployed, a staggering 50 percent report taking pain medication on a regular basis, in most cases prescription drugs. About 70 percent of employers report negative consequences of opioid use, including absenteeism and drug use on the job.

The most effective strategy to address these challenges is expansion of treatments. Decades of research have established that opioid addiction is a chronic disease and it can be treated effectively with a combination of medication and psychosocial intervention. Workers struggling with addiction must be connected to treatment so that they can achieve recovery and remain employed. Those who have dropped out of the workforce due to addiction must also receive treatment so that they can get back to work. This is the only realistic way to increase the supply of qualified workers. Drug testing is not an effective deterrent for people who have the disease of addiction. Treatment is the most evidence based approach to reduce opioid misuse in the workplace.

How can we increase treatment? Let me share with you several recommendations, many of which come from the Opioid Commission appointed by President Trump. First, protect the Medicaid expansion and the health insurance exchanges. The *Affordable Care Act* has extended health insurance coverage to nearly 1 million people with opioid use disorders. Many are in the workforce. If the law were repealed, nearly one-third of all Americans with an opioid use disorder would suddenly lose access to lifesaving treatments. Medicaid waivers that impose work requirements could force beneficiaries to quit treatment in order to maintain coverage. Second, actively enforce parity regulations established under the *Mental Health Parity and Addiction Equity Act of 2008*. For employers to help their workers get the treatment they need we must ensure that their health plans provide equitable access to opioid use disorder treatment. Third, we need to uphold regulations on association health plans. The proposed rule issued by the Department of Labor last month would allow for the proliferation of poorly regulated health plans that are subject to few consumer protections. We must not allow Americans to spend their money on health plans that may not provide coverage for opioid use disorder treatment should they or a family member need it. Fourth, rapidly expand the distribution of naloxone, a lifesaving overdose reversal drug. We must get naloxone into every hospital, school, and local police station in the country. Thousands of lives can be saved by taking this step alone. Finally, increase prevention efforts. This includes better regulation of opioid prescribing, expanded options for safe disposal, support for effective non-opioid approaches to pain management, and expansion of injury prevention programs to reduce the need for pain medications.

I applaud Congress for including an additional \$6 billion over two years in the recent budget agreement for treatment of opioid use disorder. However, given the magnitude of the crisis, more funding is needed. It is crucial that these funds be directed specifically towards the purchase of naloxone, as well as evidence based treatment, such as buprenorphine and extended release naltrexone. Greater resources are going to be absolutely crucial to enable our states and our local communities to mount an effective response to this deadly epidemic.

Thank you for your time. I look forward to your comments and questions.

[The statement of Dr. Andrews follows:]

DATE: February 15, 2018
 TO: Committee on Education and the Workforce: Joint Subcommittees on Health, Employment, Labor and Pensions and Workforce Protections
 FROM: Dr. Christina M. Andrews, University of South Carolina
 RE: Testimony: "Opioids Epidemic: Implications for America's Workplaces"

Chairwoman Foxx, Ranking Member Scott, Subcommittee Chairmen Walberg and Byrne, Ranking Members Sablan and Takano, and Distinguished Members of the Committee:

Thank you for the opportunity to speak with you today. I am a professor of social policy at the University of South Carolina and have spent the past decade researching how we can improve access to substance use disorder treatment in the United States, with a particularly focus on opioid addiction.

Without question, the opioid epidemic is having a profound impact on our nation. We are now losing more people to opioid overdose than to AIDS at the height of that epidemic, and will have lost 10 Americans to a fatal opioid overdose by the conclusion of this hearing today. The human cost of addiction and overdose is accompanied by a substantial financial price: In 2013 alone, expenses related to opioid use, overdose, death were estimated to be \$79 billion. More recent estimates from 2016 put these expenses at over \$95 billion.

The epidemic presents new challenges for our economy. Reports from employers across the country tell a similar tale: Opioid misuse is impairing their ability to hire and retain qualified workers. The Fed recently identified the epidemic as an emerging threat to economic growth. In its Beige Book, a summary of regional economic conditions, officials point to a concerning number of employers who are reporting difficulty finding qualified employees who are drug free.

The research indicates a strong link between opioids and labor force participation. More prescriptions, more unemployment. The proportion of prime-age men in the workforce has reached a historic low. Among those 25-54 who are unemployed, a staggering 50% report taking pain medication on a regular basis — in most cases, prescription drugs. The National Safety Council reports that 70% of employers report witnessing negative consequences of opioid use in

Christina M. Andrews, 1

the workplace, including absenteeism and drug use on the job. The total cost to employers annually: An estimated \$26 billion resulting from no shows, turnover, and reduced productivity.

The most effective strategy to address these challenges is expansion of opioid use disorder treatment. Decades of research have established that opioid addiction is a chronic disease that can be treated effectively with a combination of medication and psychosocial intervention. Recovery is possible.

Employees struggling with addiction must be connected to treatment so that they can achieve recovery and remain employed. Those who have dropped out of the workforce due to addiction must also receive treatment so that that can get back to work. This is the only realistic way to increase the supply of qualified workers. Drug testing is not an effective deterrent for people who have the disease of addiction. Treatment is the most sensible and evidence-based approach to reduce opioid misuse in the workplace.

How can we increase access to treatment? Let me share with you several excellent recommendations, many of which come from the Surgeon General's *Report on Alcohol, Drugs, and Health*, and the Final Report of the Opioid Commission appointed by President Trump:

First, protect the Medicaid expansion and the health insurance exchanges. The Affordable Care Act (ACA) has extended health insurance coverage to nearly one million people with opioid use disorders. Many are in the workforce. If the law were repealed, nearly one-third of all Americans with an opioid use disorder would suddenly lose access to treatment. Lifesaving drugs, such as buprenorphine and extended-release naltrexone, are costly and financially out of reach for many uninsured people. The uninsured must seek care from overburdened safety-net providers, which often have long waiting lists to enter treatment. People with opioid use disorder risk a fatal overdose each day that they must wait for treatment to begin. With an increase in the use of deadly drugs as fentanyl in the heroin purchased in the United States, the stakes of not receiving treatment on demand are high.

Moreover, Medicaid waivers that impose work requirements could force beneficiaries to quit treatment in order to maintain their coverage, with negative effects for the workplace and the epidemic. This poses a particular hardship for Medicaid beneficiaries who have severe substance

use disorder that requires medically-managed inpatient or residential treatment in order to achieve detoxification and stabilization.

Second, actively enforce parity regulations established under the Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008 and extended under the ACA. These regulations, which have benefited approximately 60 million Americans, have been critically important in reducing utilization controls have historically limited patients' ability to access to opioid use disorder treatment. Research findings from the National Drug Abuse Treatment System Survey have revealed substantial decreases in use of preauthorization and annual service limits for life-saving treatment for opioid use disorder after implementation of MHPAEA parity regulations. For employers to help their workers get the treatment they need, we must ensure that their health plans provide equitable access to opioid use disorder treatment benefits.

Third, uphold existing regulations on Association Health Plans. The Trump Administration recently directed the federal government to expand access to association health plans and other types of insurance products, such as short-term limited duration insurance. The proposed rule issued by the Department of Labor last month would allow for a proliferation of poorly-regulated health plans subject to few consumer protections. We must not allow Americans to spend their money on health plans that may not provide coverage for opioid use disorder treatment should they need it.

Fourth, rapidly expand distribution of naloxone, the opioid-agonist designed to counteract the effects opioid overdose. We must get naloxone into every hospital, school, and local police station in the country. While the price of naloxone has increased substantially in recent years, the Federal government is in a strong position to purchase naloxone in bulk at a reduced rate. According to the Centers on Disease Control, naloxone has saved over 27,000 lives between 1996 and 2014. Thousands of additional lives can be saved by taking this step alone.

Finally, increase prevention efforts. This includes better regulation and monitoring of opioid prescribing, expanded options for safe disposal, greater support for effective non-opioid approaches to pain management, and expansion of injury prevention programs to reduce the need for pain medications.

I applaud Congress for including an additional \$6 billion over two years for opioid use disorder treatment in the recent budget agreement. However, given the magnitude of this crisis, more funding is needed to meet the need. It is critical that these funds be directed towards purchase of naloxone and evidence-based treatments such as buprenorphine and extended-release naltrexone. Greater resources are absolutely crucial to enable our states and local communities to mount an effective response to this deadly epidemic.

I express my sincere gratitude for the opportunity to share my thoughts with the Committee. I look forward to your comments and questions.

Christina M. Andrews, Ph.D.
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Testimony of Christina M. Andrews to the House Committee on Education and the Workforce
 Subcommittees on Health, Employment, Labor and Pensions and Workforce Protections
 Hearing on the Opioids Epidemic: Implications for America's Workplaces

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Chairman WALBERG. We thank you. I recognize Ms. Russo for your five minutes of testimony.

TESTIMONY OF KATHRYN J. RUSSO, PRINCIPAL, JACKSON LEWIS P.C.

Ms. RUSSO. Chairmen Walberg and Byrne, Ranking Members Sablan and Takano, and distinguished members of the Subcommittees, thank you for inviting me to testify here today.

My name is Kathryn Russo and I'm an attorney at Jackson Lewis where I manage the Drug Testing and Substance Abuse Management Practice Group. My practice consists of advising employers on drug and alcohol issues that arise in the workplace, including drug testing and disability management issues. Many employers I work with are struggling with the workplace impacts of opioid addiction, including issues such as increased work-related accidents and injuries, increased employee turnover, and increased workers compensation costs. An employer may learn that an employee is using opioids when an employee voluntarily discloses that he is using prescription painkillers or that he is addicted to opioids. Alternatively, the employee may test positive for opioids on a workplace drug test. The way that an employer responds to each of these situations depends on whether the employee can be characterized as disabled for purposes of federal and state discrimination laws. Current users of illegal drugs, including those who use prescription drugs without a valid prescription, are not protected as disabled under federal and state laws. This is why an employer can take disciplinary action against an employee who uses illegal drugs or tests positive for illegal drugs on a workplace drug test. But when an employee is using prescription medication to treat an illness or is recovering or recovered from a substance abuse problem, the employee is disabled under the *Americans with Disabilities Act* and comparable state laws. These laws require employers to offer disabled employees accommodations in certain circumstances. For example, when an employee voluntarily discloses that she has an opioid addiction and needs help, employers typically offer accommodations that might consist of a medical leave of absence to obtain evaluation and treatment or a change in the employee's work hours so that she can go to treatment sessions. Many employers have employee assistance programs that allow employees to seek confidential assistance with substance abuse problems.

While employers are willing to help employees who disclose opioid addiction, they also must manage employee misconduct arising from illegal opioid use. Drug testing is an important tool used by employers to detect illegal drug use. I am seeing an increase in the number of employers who conduct drug testing, an increase in the number of drugs that employers test for, as well as an increase in the types of tests that are being conducted. Employers who conduct drug testing commonly use a "five-panel" drug test, indicating that five categories of drugs will be tested. In a typical five-panel drug test, however, the only opioids tested for are heroin, morphine, and codeine. Because of the prescription painkiller epidemic, many employers have concluded that a five-panel test is insufficient. And so employers increasingly are utilizing larger drug testing panels that include synthetic and semi-synthetic opioids.

Employers increasingly are using post-accident testing and random testing to promote drug free workplaces. Random testing is a particularly useful tool for employers because it is unannounced and unexpected. Post-accident testing is also a very useful tool for employers to help rule out whether an employee had drugs in his system at the time of the accident. However, the U.S. Department of Labor's Occupational Safety and Health Administration's recent statements concerning post-accident drug testing have been a source of confusion and frustration for employers. In May 2016, OSHA stated in the preamble to its final rule on electronic record keeping that employers are prohibited from using drug testing as a form of adverse action against employees who report injuries or illnesses. In a subsequent memorandum, OSHA explained that post-accident drug testing may be permissible where there is a reasonable basis that drugs or alcohol could have contributed to the injury or illness. This standard is confusing to most employers. Many employers believe that OSHA now requires reasonable suspicion in order to test, while other employers have stated that they don't know what the rule means.

Employers have complained that this post-accident standard first appeared in the preamble to an electronic record keeping rule and that there is no formal OSHA regulation addressing drug testing that employers were permitted to comment on before the rule took effect. Many employers believe that drug testing is an issue that is already regulated by many other federal, state, and local laws and that OSHA's position on this topic unnecessarily complicates the already complicated arena of workplace drug testing.

I appreciate the opportunity to share my thoughts with the Committee.

[The statement of Ms. Russo follows:]

**COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS
SUBCOMMITTEE ON WORKFORCE PROTECTIONS**

THE OPIOIDS EPIDEMIC: IMPLICATIONS FOR AMERICA'S WORKPLACES

February 15, 2018

Kathryn J. Russo

Good morning, my name is Kathryn Russo and I am an attorney at Jackson Lewis, where I manage the Drug Testing and Substance Abuse Management Practice Group. Jackson Lewis is one of the largest law firms dedicated to representing employers in workplace law. My practice consists of providing advice to employers on drug and alcohol issues that arise in the workplace, including drug testing and disability management issues. I am privileged to work with employers in many different industries and in all fifty states.

I am pleased to offer my perspective on how the opioid crisis impacts employers. Many employers I work with are struggling with the workplace impacts of opioid addiction, including issues such as increased work-related accidents and injuries, increased employee turnover, decreased productivity and increased workers' compensation costs and health insurance costs. For employers who operate dangerous workplaces, ensuring the safety of employees and others is critical.

The opioid crisis affects employers in many different ways. Consider the following examples of situations that employers are faced with routinely:

- An employee is out of work for some time on a medical leave of absence. In conjunction with medical treatment, he begins taking a prescription painkiller. After returning to work, the employee admits to his employer that he has become addicted to painkillers and requests another leave of absence to treat the addiction.
- An employee is involved in a work-related accident and is required to submit to a post-accident drug test. The employee tests positive for prescription painkillers.
- An employer learns that one of its employees is selling OxyContin to his co-workers.
- An employee reports for work appearing drowsy, incoherent, and apparently unable to perform his job duties. The employer has a "reasonable suspicion" testing policy and decides to send the employee for a drug test. When the employer meets with the employee to escort him for testing, he admits that he took too many painkillers.
- An employee who previously completed drug rehabilitation for painkiller addiction becomes addicted to heroin and overdoses at work.

These scenarios are just a few of the situations that employers are grappling with. The way that an employer responds to each of these situations depends on whether the employee can be characterized as “disabled” for purposes of federal and state discrimination laws.

Employees who use opioid medications pursuant to lawful prescriptions, as well as recovering and recovered substance abusers are considered “disabled” for purposes of the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, (“ADA”), and comparable state laws. However, “current users” of illegal drugs (including those who use prescription drugs without a lawful prescription) are not protected under federal and state discrimination laws.

This is why an employer can take disciplinary action against an employee who uses illegal drugs at work or tests positive for illegal drugs on a workplace drug test. But when an employee is using prescription medication, or is recovering or recovered from a substance abuse problem, the employer must analyze its legal obligations under applicable laws including the ADA, the Family and Medical Leave Act, and comparable state and local laws.

A. Who Is Protected Under The Americans With Disabilities Act?

The ADA provides that no employer “shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.” 42 U.S.C. § 12112(a). A “qualified individual with a disability” is defined as an “individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” 42 U.S.C. § 12111(8). The ADA defines a “disability” as: (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 42 U.S.C. § 12102(1).

1. Current Illegal Drug Users Are Not Protected by the ADA

An individual who is currently engaged in the illegal use of drugs is not considered a “qualified individual with a disability” for purposes of the ADA. 42 U.S.C. § 12114(a). This includes any individual who tests positive for illegal drug use, which is defined to mean the use, possession or distribution of any drugs considered unlawful under the federal Controlled Substances Act (21 U.S.C. § 801 *et seq.*). The “illegal use of drugs” does not include the use of any drugs taken under the supervision of a licensed healthcare professional or other lawful uses authorized by the Controlled Substances Act or other provisions of federal law. 42 U.S.C. § 12111(6)(a).

2. Recovering and Recovered Drug Abusers Are Protected Under the ADA.

The ADA provides that a “qualified individual with a disability” may include the following:

- An individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of

drugs, or has otherwise been rehabilitated successfully and is no longer engaged in such use;

- An individual who is participating in a supervised rehabilitation program and is no longer engaging in such use; or,
- An individual who is erroneously regarded as engaging in such use, but is not engaging in such use.

42 U.S.C. § 12114(b)(1), (2) and (3).

B. Permissible Employer Actions Under the ADA.

The ADA expressly permits employers to:

- Prohibit the use of alcohol and the use of illegal drugs in the workplace;
- Prohibit employees from being under the influence of alcohol or illegal drugs in the workplace;
- Comply with the Drug-Free Workplace Act of 1988 (which requires certain federal contractors and grantees to create policies prohibiting illegal drug use at work, among other things);
- Require employees to comply with any applicable drug and alcohol testing regulations of the U.S. Department of Transportation, Department of Defense or Nuclear Regulatory Commission;
- Hold employees who engage in illegal drug use to the same qualification, performance and behavior standards to which it holds all other employees, even if the unsatisfactory performance or behavior is related to the drug use.

42 U.S.C. § 12114(c).

In addition, the ADA expressly provides that drug tests to determine current illegal drug use are not medical examinations. 42 U.S.C. § 12114(d)(1).

C. What Must Employers Do If An Employee Volunteers a Substance Abuse Problem and Requests Help?

The ADA prohibits employers from "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the business of [the employer.]" 42 U.S.C. § 12112(b)(5)(A). When an employee volunteers that he or she has a substance abuse problem and wishes to seek help for that problem, or is already seeking help for that problem, an employer

must consider whether it can make a "reasonable accommodation" for the employee. Such "reasonable accommodation" could include a leave of absence, or a modified work schedule, among other things. The employer must make an "individualized assessment" of the situation through an "interactive dialogue" with the employee.

In addition, under the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, substance dependence is considered a "serious health condition" and therefore, if the employee is FMLA-eligible, he or she may take FMLA leave for substance abuse treatment. See 29 C.F.R. § 825.119.

However, if the employee discloses a substance abuse problem and requests help merely to avoid disciplinary action for misconduct that he/she already has engaged in, the employer is not required to offer an accommodation and may instead enforce its disciplinary policy. See U.S. Equal Employment Opportunity Commission's *The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees With Disabilities* No. 28 (Dec. 20, 2017).

D. Must An Employer Permit Employees To Use Opioids At Work If They Are Taken Pursuant To A Lawful Prescription?

In general, employers should avoid making medical inquiries about employees' use of prescription medications. Under the ADA, medical inquiries are required to be "job-related and consistent with business necessity," which means, as a practical matter, that the employer must have a safety reason for the inquiry. An employer with employees in dangerous or "safety-sensitive" jobs, however, should consider a policy provision requiring those "safety-sensitive" employees to disclose the use of medications that may impact the employee's ability to do the job safely. The employer then must consider whether the employee's use of the medication poses a "direct threat" of harm to himself or others. 29 C.F.R. § 1630.2(r). These issues must be addressed on an individualized, case-by-case basis.

Employers should not assume that an employee using prescription opioids cannot do the job, and more importantly, employers should not have policies containing blanket prohibitions on the use of certain drugs – such as opioids – at work. Such blanket policies, without any individualized analysis, may result in legal claims under the ADA and comparable state laws.

E. May Employers Drug Test Employees For Opioids, Including Prescription Opioids, And Take Disciplinary Action For Positive Test Results?

Many employers conduct drug testing to ensure that workers are not impaired by drugs while performing their jobs. There are many laws that regulate workplace drug testing, including federal regulations (such as the drug and alcohol testing regulations of the U.S. Department of Transportation's operating agencies, and other federal agencies); state laws (including mandatory laws that apply to all employers and voluntary laws permitting employers to obtain workers' compensation premium discounts); and, local laws (some cities have their own drug testing laws).

Employers who conduct drug testing commonly use a “five-panel” drug test, indicating that five categories of drugs will be tested, *i.e.*, amphetamines, cocaine, marijuana, opioids and phencyclidine (PCP). In a typical five-panel drug test, however, the only “opioids” tested for are heroin, morphine and codeine. Because of the prescription painkiller epidemic, many employers have concluded that a five-panel test is insufficient, and so employers increasingly are utilizing larger drug testing panels that include synthetic and semi-synthetic opioids.

Semi-synthetic opioids include oxycodone, oxymorphone, hydrocodone, hydromorphone, and buprenorphine. Synthetic opioids include fentanyl, methadone, and tramadol.

Last October, the U.S. Department of Health and Human Services’ Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Urine (which affect all federal employees in testing designated positions) were revised to add four semi-synthetic opioids to the drug testing panel. The U.S. Department of Transportation followed suit and revised its drug and alcohol testing regulations for certain transportation workers to add the same four semi-synthetic opioids to its drug testing panel. Those semi-synthetic opioids are oxycodone, oxymorphone, hydrocodone and hydromorphone, more commonly known as Vicodin, OxyContin, Opana, Percocet and Dilaudid, among others. DOT’s revised regulations took effect on January 1, 2018, and now all DOT-regulated employers are required to test for those four additional opioids. 49 C.F.R. § 40.87. DOT-regulated employers include those in the trucking, aviation, railroad, transit, pipeline and marine industries.

If an employer is not regulated by federal drug testing regulations, may it lawfully test for semi-synthetic opioids? The answer is yes, as long as it is permitted by applicable state law (there are a few states that limit the drugs that employers may test for), and, there is a mechanism to distinguish between unlawful use of drugs and lawful use of drugs. It is critical that employers who conduct drug testing utilize a Medical Review Officer (“MRO”) to make this distinction for them. A MRO is a licensed physician with expertise in analyzing drug test results. The MRO contacts an applicant or employee who has tested positive to discuss whether there is any legitimate medical reason that could have caused the positive test result, such as the use of prescription medications. If the MRO accepts the tested individual’s explanation, the test result is reported to the employer as negative. If the MRO does not accept the tested individual’s explanation, the test result is reported to the employer as positive. This process ensures that employers do not take adverse employment actions against individuals who are using lawful medications as opposed to illegal drugs.

With regard to disciplinary consequences for positive drug test results, employers generally may choose whether they wish to terminate employees who test positive for illegal drugs or whether they will offer the employee an opportunity for evaluation and rehabilitation, if necessary. (There are some exceptions: a few states do not permit employers to terminate employees for a first-time positive drug or alcohol test result). If, however, the employee is using prescription opioids lawfully, no disciplinary action should be taken, although the employer may need to assess the safety risk, if applicable, as mentioned above.

F. Are Employers Conducting More Drug Testing to Combat the Opioid Epidemic, Such as Post-Accident Testing and Random Testing?

Employers increasingly are using post-accident drug testing and random drug testing to promote drug-free workplaces, assuming that these types of tests are permitted under applicable federal, state and local laws.

Random drug testing is a particularly useful tool for employers because it is unannounced and unexpected. Post-accident testing also is a very useful tool for employers to help rule out whether an employee had drugs or alcohol in his system at the time of the accident. However, the U.S. Department of Labor's Occupational Safety and Health Administration's recent statements concerning post-accident drug testing have been a source of confusion and frustration for employers. In May 2016, OSHA published a final rule on electronic recordkeeping that contained a prohibition on retaliating against employees for reporting work-related injuries or illnesses. 29 C.F.R. § 1904.35. In the preamble to that rule, OSHA stated that "blanket post-injury drug testing policies deter proper reporting" and that the final rule prohibits employers from using drug testing (or the threat of drug testing) as a form of adverse action against employers who report injuries or illnesses. These statements raised many questions from employers, particularly because there are no OSHA regulations addressing post-accident drug testing.

OSHA published a memorandum in October 2016 that explained its preamble comments further. It stated that post-accident drug testing may be permissible where there is a "reasonable basis" or "reasonable possibility" that drugs or alcohol could have contributed to the injury or illness. This standard has created much confusion. Many employers believe that it means that individualized "reasonable suspicion" is required in order to conduct post-accident drug testing. Other employers have stated that they don't know what it means, and, because of that uncertainty, they will not conduct any post-accident drug testing at all, out of concern that they risk a potential OSHA citation.

OSHA also clarified that it will not issue citations to employers who conduct post-accident drug testing under federal or state laws. While this sounds reasonable, it will adversely impact employers in states with no drug testing laws (and who are not subject to any federal regulations). For example, the state of Minnesota has a drug testing law that applies to all employers which permits broad post-accident drug testing. It is therefore reasonable to expect that citations will not be issued to Minnesota employers for post-accident drug tests. However, in many other states, post-accident drug testing is not regulated at all, which means that employers in those states must comply with OSHA's rule or face a potential OSHA citation.

Employers also have complained that this post-accident testing standard first appeared in the preamble to an electronic recordkeeping rule, and that there is no formal OSHA regulation addressing drug testing that employers were permitted to comment on prior to the rule taking effect. Many employers believe that drug testing is an issue that already is regulated by many other federal, state and local laws, and that OSHA's position on this topic unnecessarily complicates the already-complicated arena of workplace drug testing.

G. What Are Employers Doing To Address the Opioid Epidemic?

There are a number of steps that employers can take to address the effects of the opioid epidemic in the workplace, such as:

1. Enact strong company drug policies. Consider implementing a drug testing program if the Company does not already have one;
2. Expand the drug testing panel to include semi-synthetic opioids;
3. Consider whether the Company will terminate employees for positive drug test results, or whether the Company will offer an opportunity for evaluation and treatment;
4. Train supervisors how to spot the signs of drug misuse, and to take appropriate steps under the employer's policy;
5. Train all employees on the dangers posed by prescription painkillers (because many people do not fully understand how addictive they are), including:
 - a. The risks of opioid pain medication use, especially for workers with sleep apnea, COPD and other respiratory problems;
 - b. The dangers of using alcohol and sleep aids with opioid pain medications;
 - c. The risks of addiction and drug overdose.
6. Do not stigmatize those who are struggling to recover from substance abuse problems; and,
7. Make employee assistance programs available to assist employees when they need help but may be afraid to tell anyone at work.

I appreciate the opportunity to share my thoughts with the Committee.

Chairman WALBERG. Thank you. And thank you to each of the witnesses and trust that my colleagues and myself will note how well you all kept to the time limits, and may we do the same.

I recognize myself now for my five minutes of questions.

Mr. Rhyan, I noted earlier that today in our modern world we often spend more time with our co-workers than we do with anyone else, including our families. What role can you suggest that employers could play in supporting substance abuse recovery in the workplaces and in their communities?

Mr. RHYAN. Absolutely. It's very important to consider the role of the employers. As you mentioned, there's a significant amount of time that individuals spend there and also the key role that employers play for the majority—in cases of providing insurance. And as a result, making sure that they are aware of the services that they can provide and they make them available to their employees. So, through that role, it is very important for employers to both make their employees aware of what services are available and also make sure that they get access to them when needed and in the best case possible.

Chairman WALBERG. On the other side of the ledger, what can employees do as part of this process as well in the workplace and in their communities?

Mr. RHYAN. Yeah. I think employees can take an active role to work with their colleagues and certainly be aware of issues that become available. We know that having a good support system is really important for those trying to recover from an opioid addiction and so certainly employees being aware of, and being there for other individuals is very important.

Chairman WALBERG. Ms. Russo, you noted in your testimony there could be a situation in which an employee has a legal prescription for opioids and then tests positive during a drug test. In that case, would the employer be notified by the drug testing facility of the employee's opioid use?

Ms. RUSSO. Typically no. So what happens is when the drug testing facility gets a positive test result, they send it to a medical review officer, who is a licensed physician, to analyze whether this is lawful or illegal drug use. If the medical review officer is satisfied that the person had a valid prescription, it will usually get reported to the employer as a negative. However, sometimes in very dangerous industries, I've seen arrangements where the medical review officer will flag it for the employer, just to note there may be a safety issue without disclosing what the issue is. And then the employer then has the obligation to talk to the employee to find out, you know, what's the situation, we think there may be a safety issue, and to work it out, just to make sure that the employee can use their medication and work safely in the workplace.

Chairman WALBERG. And there isn't a legal problem with doing that for the employer if they follow certain prescribed?

Ms. RUSSO. No, that's correct; they can do that.

Chairman WALBERG. With prescription drugs?

Ms. RUSSO. Yes.

Chairman WALBERG. Okay. Because, you know, as you mentioned, that five-points test, that does cause a bit of a problem

when you are dealing with such an expansive problem that goes from opioids to heroin and back and forth at times.

Ms. RUSSO. That's correct. Because, if an employee tests positive for opioids, the employer isn't going to know. Is it because of heroin or because they're using a prescription drug? So that's why there's this mechanism to have a medical review officer to review it to determine whether this is pursuant to a valid prescription or whether it's an illegal drug.

Chairman WALBERG. Okay. Mr. Rhyan, you stated that health care costs related to opioid crisis from 2001–2017 were almost \$216 billion, stemming largely from emergency room visits to treat and stabilize patients after an overdose and associated costs. In your opinion, would earlier interventions to address opioid abuse help to decrease these associated health care costs and keep employees participating in the workforce?

Mr. RHYAN. Yes, absolutely. There's two components to that. Certainly the first is preventing an opioid substance use disorder before it occurs. Because obviously any steps that can be taken to limit the excessive amounts of opioids that might be prescribed initially or any other steps that can be taken to decrease the likelihood that somebody develops a substance use disorder will prevent those adverse outcomes, such as emergency department visits, hospitalizations, or any downstream increased healthcare costs associated with diseases such as HIV, hepatitis B, hepatitis C, all of which we know are related to opioid substance use disorders and illegal drug use.

The other component, that is of course providing treatment once we can identify those that have a substance use disorder. So, if we can provide better treatment and recovery services early on, we can prevent individuals from falling into those most severe outcomes. And that absolutely will cut healthcare costs on the front end if we can do that.

Chairman WALBERG. Thank you. My time has expired. I now represent my friend and ranking member, Mr. Sablan.

Mr. SABLAN. Yeah, thank you. Thank you very much again, Mr. Chairman, for today's hearing.

I have a question—actually two questions, Dr. Andrews, if I may. Thank you again for taking the time to testify today to all the witnesses.

So, Dr. Andrews, can you discuss any gaps in access to substance use disorder treatment, especially in workplace health care coverage? For example, how does treatment access differ for blue collar workers as opposed to white collar workers? Does it differ across racial groups or socioeconomic groups?

Dr. ANDREWS. Absolutely. Currently in the United States only about 10 percent of people with a substance use disorder ever receive any treatment for their condition. So that means we have about 90 percent of Americans who have an active substance use disorder and are not receiving treatment for their condition. The reasons for that are multifaceted and complex. Insurance access to treatment is an incredibly important aspect of it, as patients who report that they sought treatment but were unable to receive it indicate time and time again that financial barriers were key to their inability to access treatment. People in white-collar professions

typically have greater likelihood of having a private insurance plan that offers higher reimbursement rates, that opens doors to entry into a greater number of addiction treatment programs. So, more choices means more likelihood of being able to enter treatment. People in blue-collar professions, maybe working in fields where whether it's in the restaurant service industry or different areas of manufacturing or construction, where insurance benefits may not exist or they may be less generous and—

Mr. SABLON. I mean what about does it differ across racial groups or socioeconomic groups? You have alluded to the socioeconomic group, but the racial groups?

Dr. ANDREWS. Right, right. While racial and ethnic minority groups do not use substances any more than whites—similar rates of use—they tend to access treatment less frequently. And there are a number of reasons for that, but again, insurance access, geographic access to treatment, barriers related to other challenges they may be facing related to employment, childcare, transportation, and the ability to access culturally and linguistically competent care are also key.

Mr. SABLON. So you also testified, Dr. Andrews, that increased prevention efforts could stem the opioid crisis. The need for pain medication after a workplace-related injury or illness is often the gateway to addiction. Can you comment—we have a minute and a half—on what some of those workplace prevention programs might include and whether there are ways we can address the prescription of opioids in the workman's compensation system?

Dr. ANDREWS. Right, absolutely. The research suggests that there is a really strong connection between working in industries that have high levels of injury. When people have an injury they're much more likely to receive opioid prescriptions, and when they receive opioid prescriptions they are at greater likelihood of developing an opioid use disorder as a result. So one of the upstream prevention strategies that we can use to try to break this sort of domino effect before it begins is illness and injury prevention programs, particularly those offered by OSHA, that can try to minimize the likelihood of those injuries from happening and the need for pain medication moving forward.

Mr. SABLON. Ms. Russo, let me just ask you because you sort of mentioned and I am trying to understand. I have very little time, but when a person in the workplace is tested and it comes back positive, does the result show it, whether it is prescription drugs or heroin, for example? Or does it just show as positive?

Ms. RUSSO. The result that the employer gets will usually just say positive and then it will show the category, cocaine, opioids, whatever it is. If the person is using a valid prescription it will already have been screened by the medical review officer who will then make it into a negative, so the employer won't know.

Mr. SABLON. All right. Thank you, Ms. Russo. Thank you, Mr. Chairman.

Chairman WALBERG. I now recognize the chairman of the Workforce Protections Subcommittee and co-chairman of this hearing, Mr. Byrne from Alabama.

Mr. BYRNE. Thank you, Mr. Chairman. Thank you, ladies and gentlemen, for being here today. Very important topic.

Ms. Russo, in my prior life I was an attorney who represented management, so this would come up not infrequently in conversations I would have with my clients. And I would inevitably have to talk with them about the *Americans with Disabilities Act*. So if you would please expand on—I know you have touched on this a little bit—expand on, first of all, what protections the employee has under the *Americans with Disabilities Act* in this particular environment, but also, most importantly, what the employer is permitted to do.

Ms. RUSSO. Okay. So there's really two ways I think in the context of drug use that an employee would be protected under the *Americans with Disabilities Act*. So some employers will ask employees to disclose the use of prescription medication if they're in a very dangerous job. Generally, an employer would not ask that question, but to promote workplace safety they may ask people in very dangerous jobs to report it so that the employer can have a discussion with them about how can we accommodate it and make sure that you can do your job safely. That's one potential context that it may come up.

The other one is that recovering and recovered substance abusers are protected as disabled. So if an employee comes forward and says, "I have a problem. I need help," then they are now protected as disabled. The employer then would consider a reasonable accommodation, which in this instance typically means a leave of absence. So we would give them a leave of absence to go for evaluation and treatment. They might be eligible for a leave under the *Family and Medical Leave Act*. Even if they're not eligible, there may be other policies that the employer has that they can take advantage of. But in that instance, they would be—you know their substance dependence would be the illness that's protected. So the employer would not take adverse action against them.

Mr. BYRNE. Ms. Allen, I wanted to talk to you too about your testimony. I think you mentioned that when your employees are in trouble, many of them come to the company's leadership and ask for help. This is not the case in all workplaces. I am sure you know that. And not all employees feel comfortable talking about these issues with their bosses, the people that they work under. How did you first begin to reduce that stigma that surrounds opioid abuse within your workplace to create a community of acceptance and support?

Ms. ALLEN. Well, thank you for the question. I would have to say that in our organization we all interact together. The folks that have worked with us, we have people who have been with us for 30 years and somebody new walked in the door today, I'm sure, in all three of our facilities. And we believe in close communication. We believe in observing each other, being friends, being family. When somebody—I think I said in my testimony—when somebody in our company hurts, we all hurt. So we grow. It's a small community. Wheeling, West Virginia is a small community. We grow up together. A lot of people have grown up together. We attend weddings. We attend funerals. So we know each other. And if we don't, then others do. And we communicate and we share. Just about every one of our shift changes in our facilities we try to have somebody on the floor saying, "Hi, how are you doing? What's new?"

And, when somebody walks in the door, and goes straight to the telephone, and picks up the telephone, and makes a call, and puts it down, that used to tell us that person came from the halfway house, because they had to report in. And then, after their shift, they'd pick up the phone, make a call, and head out the door. And so it's just what we begin to observe. It's the culture that we create inside our company, and we talk about it. We communicate.

Mr. BYRNE. And talk also about the leadership, because everything starts at the top. So how does the leadership of an organization, whether it is a private sector company or anywhere else, how does the leadership communicate that to create that sort of culture?

Ms. ALLEN. By leading. And I don't mean to be disrespectful with that comment, but leadership is about taking care of people in your fold. It's about inspiring people to grow and to develop and to do the right thing. It's about having influential behavior so that others can model that behavior and feel comfortable modeling that behavior. In our culture, we communicate together. We work together. And as I stand in front of our company, I encourage other leaders in our company to stand in front of all of our folks and recognize that we're just like the rest of the people inside our company, it makes it a safe environment. It makes it a non-threatening environment. It makes it an environment where people can feel a little vulnerable to say, "Can I talk to you for a minute?"

My door is always open. Our leadership, the rest of our leadership team, our doors are always open and we're there to help. What that also does for us, quite frankly, is it builds a strong community inside of our company and it makes us hopefully a model for other businesses to recognize the same.

Mr. BYRNE. Thank you. My time is up. I yield back.

[The statement of Chairman Byrne follows:]

Prepared Statement of Hon. Bradley Byrne, Chairman, Subcommittee on Workforce Protections

Good morning, and thank you Chairman Walberg for beginning today's joint subcommittee hearing.

I'm pleased to be joining our witnesses and members of both subcommittees as we continue the discussion on the impact the opioid epidemic is having on American communities and workplaces.

The alarming increase in the abuse and misuse of opioids is a matter of great national concern, and I am pleased that Congress and the private sector are having these discussions and actively looking for ways to reverse the damage of opioids in our communities.

One of the most alarming aspects of this epidemic is that misuse and abuse of opioids can happen so quickly, and often begins with prescription medication.

My home state of Alabama is not immune from this troubling development. Alabama ranks first in the nation in the number of painkiller prescriptions per capita, with more than 5.8 million opioid prescriptions written in 2015. That's more than 1.2 prescriptions per person.

An unfortunate reality is that this epidemic is happening to our coworkers, and in business communities large and small. Employers and employees alike are seeing the personal and economic toll this epidemic is having.

Only now are we grasping the tragic statistics that illustrate the impact this problem is having on the American workforce. According to one recent estimate, opioid abuse costs employers \$18 billion per year in sick days and medical expenses.

It is troubling to hear that workplaces around the country have been affected by opioid misuse and addiction. But increased costs are not the most troubling way this epidemic has impacted the workplace. According to the Bureau of Labor Statistics,

the number of overdose fatalities on the job has increased by at least 25 percent annually since 2012.

These facts are alarming because they show that employees who abuse drugs, like opioids, are creating unintended consequences for their fellow coworkers.

Those who misuse any illicit substance while at work are creating a risky environment, and that can also lead to workplace incidents where other employees could be hurt on the job.

Employers are recognizing the risks that opioid abuse has on the workplace, and it is reassuring to hear that businesses large and small are taking steps to address this problem in their organizations.

It is encouraging to hear that more employers are looking for ways to identify, educate, and assist employees who struggle with opioid abuse and addiction. Employee Assistance Programs are a great tool to help employees get the resources they need to start on the road to recovery. I do believe more can and should be done to make employees more aware of these resources before it is too late.

Employers and fellow coworkers play a pivotal role in keeping workplaces safe across the country. I join my colleagues in cautioning the federal government from taking broad and sweeping action to create unnecessary bureaucratic mandates that would inhibit employers who know what programs work best for their individual employees.

Our witnesses today have proven that they are uniquely positioned to tell us more about how companies are adopting and executing new best practices to combat this tragic epidemic in our communities. I would like to thank the witnesses for sharing their stories about how the opioid epidemic affects the workplace, as well as what they are doing to help solve this problem.

Working together with government, businesses, nonprofits, and local communities, I am hopeful we can bring an end to the opioid epidemic.

Chairman WALBERG. I thank the gentleman. I recognize now the ranking member on the Workforce Protections Subcommittee, Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. I appreciate this opportunity to question our witnesses.

My first questions are for Dr. Christina Andrews. Dr. Andrews, we know that access to health insurance coverage often makes the difference between whether someone seeks healthcare or foregoes it. Can you discuss the impact of the *Affordable Care Act* on the ability of patients to access substance use disorder treatment?

Dr. ANDREWS. Certainly. The Medicaid expansion has been an absolutely critical tool used by states in order to improve access to opioid use disorder treatment. As I mentioned in my statement, roughly one-third of people who are living in the United States who have an opioid use disorder have access to insurance, either through Medicaid or through the newly established health insurance exchanges. And that enables them to access lifesaving treatment for their condition, most notably medications like buprenorphine and extended release naltrexone, which have been shown to dramatically reduce risk of overdose and death.

In our research that we've done with stakeholders in 10 states throughout the United States these leaders have indicated time and time again that a big part of their decision to expand Medicaid was related to the opioid epidemic and that they wanted to use every policy tool they had available to them in order to address this disorder because they were seeing the devastation that it was causing in their communities.

Mr. TAKANO. So Medicaid has been an extremely, extremely important tool in addressing opioid addictions?

Dr. ANDREWS. Absolutely.

Mr. TAKANO. Well, the budget proposal released earlier this week calls for huge cuts to Medicaid funding, what will these cuts do to coverage?

Dr. ANDREWS. Cuts to Medicaid in the midst of an escalating opioid epidemic could result in lost lives. I think that Medicaid being such an important tool for responding to this epidemic and getting treatment for people who need it make it really key. And the research that we've been doing, as well as a lot of evidence that's been coming out over the past few years, suggests that Medicaid has played an extraordinarily important role in increasing access to opioid use disorders.

Mr. TAKANO. I just want it to be clear to people out there that when the administration talks about cutting back or repealing and replacing the ACA, that Medicaid expansion was a huge part of the *Affordable Care Act*. So, you know, I could be using the word *Affordable Care Act*, but one big chunk of the *Affordable Care Act* was the expanded Medicaid, which allows for just a tremendous number of people, millions of people, gaining access to it, gaining access to this insurance, therefore also being able to address their opioid addictions.

There seems to be the notion that those on Medicaid are not working. However, a majority of Medicaid recipients are working. And that is what the head of the Inland Empire—IEHP, which is the Medicaid plan in my area, my county, in Riverside County—he tells me that, you know, up to 60 percent of the people are working. Those that are not are either disabled or they are caregiving for somebody. But many of these folks are on low-wage jobs where coverage is not available otherwise and so Medicaid fills in that gap.

How does Medicaid impact the health of a workplace?

Dr. ANDREWS. Mm-hmm, absolutely. Yes, I read that report. Excellent work by the Kaiser Family Foundation looking at non-elderly adults' participation in the workforce, and seeing upwards of 60 percent are already in the workforce. Those who are not able to be in the workforce, many of whom have substantial barriers to work. And one of the major ones is behavioral health disorders, including opioid use disorder treatment. So if we were to impose work requirements on this group of individuals it may force them to either quit treatment that they need to get well or it would force them to forgo treatment in order to maintain their health benefits.

Mr. TAKANO. Very quickly, my time is running out. So really giving them access to the medical care, the Medicaid, actually will enable them to work.

Dr. ANDREWS. Absolutely.

Mr. TAKANO. And supporting the work requirement paradoxically would hamper their ability to get into the workforce?

Dr. ANDREWS. Yes.

Mr. TAKANO. Anyway, my time is up, Mr. Chairman, and thank you for the opportunity.

Chairman WALBERG. I thank the gentleman. Now I recognize our resident professor, Mr. Brat, from Virginia.

Mr. BRAT. Thank you, Chairman. Your words are prescient. I am going to—everyone is going off on the technical side and the policy side and the employer/employee side, so I am going to switch my

comments a little. I really liked your comment on leadership. I think that is absolutely key. Back home I have a few leaders. Shinholser runs a foundation. My sheriff, Karl Leonard, in Chesterfield has a program that is so successful, when the inmates get out they come back in. They voluntarily come back in for treatment and recovery because the team and the spiritual bonds they formed are so powerful in helping them recover. And they realize this and they speak in those terms. And so that language, the inmates themselves use, "I have a hole in my soul." That is their words. That is their language, right.

And so today in the scientific world, and I taught economics and got a PhD, and et cetera. It is hard to quantify the soul, right. Not good stuff on that. So I will not bore you with going back to Plato and Aristotle. But a lot of ethics, for example, there is not data points on ethics. So terms like "the good," you can't measure it. It is important, I think. Science, right. You can't prove science exists because it is an idea. And yet, I think all of you on this panel agree that science exists. And so this has a long pedigree in the history of philosophy. And so have we overdone it on the drugs and the treatments and the professionalism and missed the boat a little bit in terms of "Hey, I got a hole in my soul. These people are helping me deal with that," is there anything going on in the literature? And if you all just want to take a quick crack at it, you get 45 seconds each according to the clock.

Let us start with Mr. Rhyan.

Mr. RHYAN. I think we very much need to look at solving this problem with a holistic approach. And so it's really both/and because you need both evidence-based treatment services, which have been established to work very well, and you also need to look at the individual. And certainly taking the approach of doing the care one individual at a time is really the best way to solve this problem. But that can be informed by the research as well. It's really both.

Mr. BRAT. Ms. Allen?

Ms. ALLEN. Well, thank you, Congressman, for your question. I don't know the research. I don't do the research; we make popsicles. But we believe in people and we believe in the resiliency of the human spirit. And we have peer groups, informal peer groups inside our company that are friends with each other and they recognize problems and they work together. And I don't know, thankfully, because—I'm thankful because that's the way an organization should operate. I don't know all of the things that happen, but I know that they happen because people care about each other. And when you create that kind of an environment, I personally believe a lot of the statistics would take care of themselves.

Mr. BRAT. Thank you. Professor?

Dr. ANDREWS. Well, the importance of human connection cannot be argued. And I really appreciate that comment. I think it's central to what we're doing. It must be a multifaceted approach. We need resources to buy naloxone because naloxone can save somebody who has experienced an overdose from dying. We need resources for medications like buprenorphine and extended release naltrexone. A recent evaluation coming out of Vermont, where they've been doing some excellent work around addressing the

opioid epidemic, showed that providing that drug along with the kind of psychosocial support reduced use of opioids from 86 out of 90 days when people were coming down to only three days on average; the vast majority of people making huge improvements. And as the evidence suggests, we have the tools to solve these problems. We need to put the resources to getting them out to everyone who needs them.

Mr. BRAT. Super. Ms. Russo?

Ms. RUSSO. I'm seeing more employers offering that kind of support to their employees, putting employee assistance plans in place, making sure they know about it, making sure that they know where in their geographical area they can go for help, you know, having strong policies, letting people know that you can take a medical leave of absence if you need it. And the other thing that many employers do, is they don't always terminate somebody when they test positive on a drug test. They very often will give them an opportunity, get evaluated, you know, get help, and then come back to work. That's a very common thing.

Mr. BRAT. That is great. Thank you very much. Chairman, I yield back.

Chairman WALBERG. I thank the gentleman. I recognize the gentlelady from Ohio, Ms. Fudge.

Ms. FUDGE. Thank you very much, Mr. Chairman. And I am really happy that we are having this kumbaya moment right now, that we have such a religious group. I too am very religious and I thank you for praying the victims of the 18th school shooting this year. You know, the Bible tells us to watch as well as pray. So we should be knowing and talking about what is going on around us. The Bible tells us that we are our brother's keeper. The Bible tells us that we should take care of our children and what Jesus thinks about those who don't. You know, we talk about praying is enough, it is not enough. We talk about the mentally ill. There are mentally ill people in every industrialized nation in the world and there is no other country that has these kinds of shootings. You know why? Because they do not have access to weapons of mass destruction by way of assault rifles, AR-15s, AK-47s. They don't have them. That is the difference. Yet, we talk about mental health is the problem, but we defund mental health treatment, we defund counselors in schools. So you can't have it both ways. Either you care about these kids or you do not. Praying doesn't make it any different.

Dr. Andrews, we know that it is not always what happens in the world, we know sometimes it is about who it happens to. So I remember very clearly when we had a war on drugs and a just say no, just because it was crack cocaine and it was affecting people in poor and minority and urban communities. Now we are all worried about opioids, which I am as well because it is ravaging my community, but because it is happening in rural communities, in wealthier communities. We talk about it but we don't put any money behind. We say we want people to get better but we won't pay to treat them. So please help me understand what is it that we can do as a Congress to make this situation better?

Dr. ANDREWS. Absolutely. Thank you for the question. I think that one of the things that we learned from the crack cocaine epidemic and the war on drugs was that a strong law enforcement ap-

proach that does not also take seriously the importance of a public health perspective and the need for treatment is not successful. And it resulted in a mass incarceration of many individuals in urban and largely African-American communities. And that resulted in devastating impacts for their children, their families, and their communities. And those are mistakes that we must not repeat. And I think that one of the things that is going to be most important moving forward is to reduce the stigma around opioid use and to connect people to treatment and to provide the resources that we need in order to do that successfully. And while I am very grateful for the funding that Congress has allocated through both the *Cures Act* as well as the recent budget agreement, addiction is a disease that is chronic in nature and that once somebody has the disease of addiction they will have to receive services to maintain their wellbeing for the rest of their lives. And so short-term funding initiatives that last one or two or three years will not address the problem in the long-term. Insurance coverage to enable people to stay well is going to be really key.

Ms. FUDGE. Okay. Just quickly, is it going to help us at all if we say to these drug companies, stop marketing opioids to doctors' offices and paying them to distribute them? A lot of our doctors' offices have become drug dealers. Am I right?

Dr. ANDREWS. While this is somewhat out of my area of expertise, I have certainly kept up with the reports and I think it has been a very problematic trend that these drugs have been marketed to physicians over a long period of time indicating that they are a safe—

Ms. FUDGE. Dr. Andrews, I am sorry to interrupt you, my time is really going.

Dr. ANDREWS. That's all right.

Ms. FUDGE. So I think that we are going in the right direction. And I would just say to you that the next time somebody reports to you with an opioid problem tell them that our prayers and our thoughts are with them. See if it heals them.

I yield back.

Chairman WALBERG. I thank the gentlelady and I recognize the distinguished chairperson of our full Education Workforce Committee, Mrs. Foxx.

Mrs. FOXX. Thank you very much, Mr. Chairman, and thanks to you and Mr. Byrne for organizing this hearing, and also to all of the members of the panel. I think you can see this is a topic that unfortunately we have a great deal of interest in because we know it is impacting so many people. And we very much appreciate you all coming here today.

Ms. Allen, thank you very much for talking about your personal experiences with the Committee today and thank you for taking steps in your business to decrease the stigma around prior drug use and give individuals a second chance. According to several studies, individuals who previously used opioids have the highest relapse rates of all substances, excluding alcohol. This suggests there is still much work to be done even after rehabilitation. At your company, what programs do you have in place that will help to decrease the likelihood of relapse?

Ms. ALLEN. Thank you, Dr. Foxx, for your question. Specific programs in place, unfortunately, we don't at this time, but we have individual instances. Unfortunately, also, the failure rate is high, as you suggested. Once again, it's not formal, but we watch each other, we pay attention to each other. One example I can think of, and I believe is in my written testimony, is about an individual who we noticed slipping. We tried our best to have conversations. We connected him with an outside counselor. We have insurance services that will cover those things. But it's a slippery slope and it's a painful slope. And as Dr. Andrews suggested, it's a lifelong illness. It's an illness. And we were unable to help him and I believe he's incarcerated again.

So we're working on it. It's a journey for us. And I have to thank the Committee, the Subcommittee for inviting me because out of this will come a lot more programs inside our company and inside our community as we learn as well.

Mrs. FOXX. Thank you very much. Mr. Rhyan, many proactive responses to the opioid epidemic came out of necessity, starting at the local level. You mentioned the engagement of community stakeholders to discuss the local impact of the opioid epidemic in Lorain County, Ohio. Can you talk more about specific ways employers are getting involved in their local communities and how local leaders are playing an important role by coordinating with employers and others to address the opioid epidemic?

Mr. RHYAN. Thank you. That's a very important question. And being aware of the local circumstances, not only of the problems that are going on within the community, but also what the resources available there are. Part of our project in Lorain County was to go and do an availability and services analysis and go out and actually look and say, "What are the services that are available right now and where are they within the county?" Because the services that are available don't always line up with where the needs are of the population. And so certainly employers that can be aware and make those connections ahead of time and be aware of where the needs are and then also where the solutions are and where the services are available is really important. And to be able to draw those connections for their employees as soon as possible helps expedite individuals into treatment and helps make that treatment more likely that it's going to stick and that they're going to actually continue through to recovery.

Mrs. FOXX. So being prepared in case something happens you are saying?

Mr. RHYAN. Yes, right, absolutely. This is certainly something that we need to—employers need to be ready for ahead of time. They can't be reactive to this problem anymore.

Mrs. FOXX. All right. Ms. Russo, we heard Ms. Allen talk about how her company is providing resources and assistance to employees who are struggling with opioid abuse. What are some of the steps that you think that small businesses in particular can take, regardless of their size, to begin to address opioid abuse in their workplace? Are you familiar with other programs that you can share with us?

Ms. RUSSO. I think training is a very important thing for employers to do, both of their supervisors and the employees. I think, you

know, many employees don't really understand how addictive painkillers are, how dangerous it is if they are interacted with alcohol or other types of drugs. I think, you know, providing training to employees is helpful. Training supervisors on drug policies and how to address drug problems in the workplace, I think, is extraordinarily helpful because very often supervisors don't know what to do. Having clear medical leave policies is very important. Having employee assistance plans is very important. Consider changing your drug testing policy from terminating everyone, to offering them an opportunity to get treatment. Those are some of the things that I'm seeing employers do.

Mrs. FOXX. Thank you very much. My time is up.

Chairman WALBERG. I thank the Chairwoman and I recognize the ranking member of the full Committee and gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, you opened the hearing by talking about the tragedy in Florida and the need to do something about school shootings. So, Mr. Chairman, it is obvious that the Judiciary Committee is unable to hold hearings. They didn't hold hearings even after Sandy Hook. And I was wondering if this committee could hold hearings, particularly in light of the quote this morning in Politico where Secretary DeVos has encouraged Congress to hold hearings on school shootings. I was wondering if you could make a commitment to hold some hearings in this committee.

Chairman WALBERG. Well, I appreciate the question and I certainly will talk with the chairman of the full Committee, Ms. Foxx, about that and where we have authority and opportunity to assist and move forward in whatever area that comes under our jurisdiction. We are certainly open to that.

Mr. SCOTT. Thank you, Mr. Chairman.

Dr. Andrews, you indicated that drug testing is not an effective deterrent. Other testimony has suggested that it is a good strategy. Could you comment further on why drug testing is not an effective strategy to deal with the problem?

Dr. ANDREWS. I'd be happy to. As I've mentioned previously, addiction is a disease. It is a chronic disease. And one of the symptoms of the disease is uncontrollable cravings for a substance. And as a result of that, the threat of a drug test or random drug testing would not necessarily be successful in keeping somebody from using because they have a physiological dependence on that substance. The best way to stop people from using opioids is to provide treatment, especially medication assisted treatment.

Mr. SCOTT. Is that reality the reason why the criminal justice system as a response is a totally ineffective strategy from a cost effective basis?

Dr. ANDREWS. Yes, I believe very strongly that a public health approach is needed to respond effectively to the opioid epidemic. Decades of research document that addiction is a disease and it requires treatment in order to help people to move into recovery and to maintain recovery.

Over the past couple of decades science has made incredible advances in treatment and we now have medications, such as buprenorphine and naltrexone that are very effective in helping

people to get well. And that has incredible benefits for employers who are able to retain people who've made valuable contributions to their company.

Mr. SCOTT. As you have suggested, that treatment is not free and you said one-third of the people pay through the *Affordable Care Act*, either Medicaid expansion or the exchanges. One of the *Affordable Care Act* visions is a list of essential benefits where behavioral healthcare, including substance abuse treatment, is part of it. You mentioned the associated health plans that will allow plans to be written without the essential health benefits, how do other initiatives that eliminate or reduce the importance of essential health benefits, how do they affect the ability to afford substance abuse treatment?

Dr. ANDREWS. Right. When people purchase a plan that doesn't include the consumer protection to cover substance use disorder treatment they can find themselves in a position where one of their or their family members needs lifesaving treatment for opioid use disorder and cannot afford to receive it. In those cases their only option is attempt to receive treatment from a safety net provider that is funded by federal and state block grants. But unfortunately those programs often have very long wait lists and people are required to wait weeks and months to receive treatment. And we simply do not have that kind of margin of error with this particular illness and the high risk of overdose and death that is associated with it.

Mr. SCOTT. Thank you. And the *Affordable Care Act* also has a prohibition against considering preexisting conditions. If someone has had a long period of addiction and buys a policy, under present law they can get treatment. If the *Affordable Care Act* and all its protection are repealed, can you say what effect the loss of preexisting conditions protection would have?

Dr. ANDREWS. When people who have an opioid use disorder are unable to access treatment due to financial barriers they will suffer, their children will suffer, their families will suffer. They will have risk of overdose and death as a result.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentleman. Now I recognize the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thank you. I was just looking a little bit about the tragedy yesterday in Florida and, at least if you can believe what they say on the internet, the shooter was receiving mental health treatment, which reminds us that mental health treatment is not all panacea. Sometimes it makes things better, sometimes it makes things worse. You never know, but it is something we have got to remember.

One of my senior staff had a relative who recently had a major surgery, was prescribed opiates and, per usual, more opiates than they would ever need. It is really a problem with the medical establishment, that they have overprescribed these things. But when his fellow co-workers found out that they had extra opiates they harassed him all the time for them, which is kind of amazing. And I wonder is this a common experience that you find, that employees who maybe were injured at one time or another get harassed by

other employees looking for more opiates? Anybody heard of that being a problem? No, nobody has.

Ms. RUSSO. I have.

Mr. GROTHMAN. Okay.

Ms. RUSSO. I often counsel employers who are dealing with employee misconduct issues because they have got employees who are selling their oxycontin to co-workers at work. It is a very big problem for employers.

Mr. GROTHMAN. Okay. Yeah, it is a real problem with the medical community that they have over prescribed these things. And it shows no matter how long you go to school, it doesn't give you common sense.

Next question I have, obviously there is a lot of treatment going on already and again and again you hear of people who have been in treatment lots of times and it doesn't succeed. So it would indicate to me that the last thing we want to do is throw money at treatment because, again, bad treatment is almost sometimes better than no treatment. Could anybody comment on the percentage of times people go in for treatment that they stop using opiates? Anybody have a comment on that in their experience, in their businesses? Does it work half the time, a tenth of the time, 90 percent of the time? Any comments?

Dr. ANDREWS. I can speak to that. Before we had access to evidence-based medications for treatment of opioid use disorder, rates of recurrence of use were very high, upwards of 80 percent. But with the introduction of buprenorphine and extended release naltrexone we are seeing much, much higher success rates in terms of people being able to maintain—to get into recovery and to maintain recovery.

Mr. GROTHMAN. I am going to cut you off because I have such a limited period of time. How many times do you have to use say an opiate, say heroin, to become addicted to heroin? Do you want to go right down the aisle and you can all give me a number?

Mr. RHYAN. I'm not a medical professional so I don't think I should—

Mr. GROTHMAN. Nobody knows? Anybody have an opinion on that?

Ms. ALLEN. I have no idea. I've never used opioids.

Mr. GROTHMAN. Okay, nobody knows.

Ms. ALLEN. But I have heard that it doesn't take more than once. I've heard people say that the only difference between them and me or you is one decision.

Mr. GROTHMAN. Well, I am not sure that is true. Okay, go ahead, Ms. Allen—or Ms.—I am sorry.

Dr. ANDREWS. The research suggests that the proportion of people who engage in what is called casual opioid use or heroin use, about 20 percent of those will proceed on to sort of a full-fledged dependence and addiction. So that's what we know at present.

Mr. GROTHMAN. Okay. Okay. Okay, we will leave it at that. I give the rest of my time back to the Chair.

Chairman WALBERG. I thank the gentleman. Votes, have they been called? 10 minutes left to vote? Well, we will—the members have this series of votes. We need to get to the floor. But to allow members the opportunity to question the witnesses, we will return

to the hearing as quickly as possible. I urge all members to return here and as soon as we have a sufficient number of members we will begin. And so forgive us for having to leave you at your seat right now. We will do our best to get the votes and then be back.

We stand in recess.

[Recess]

Chairman WALBERG. The Subcommittee will come to order. I appreciate the witnesses cooling your heels for that period of time, including our demonstrations. So we are glad to be back.

I now recognize the gentlelady from Delaware, Ms. Blunt Rochester.

Ms. BLUNT ROCHESTER. Thank you, Mr. Chairman. First, I want to thank the panel so much for your testimony and just on so many different levels. And I have a few different questions that aren't necessarily connected.

So the first is going to be Ms. Russo. You all talked about the—my real question is whether—you know, I assume if it is a physically demanding or a dangerous job that it would be disproportionally impacted in terms of who is prescribed and who might be a part of this epidemic. But I was wondering if there are particular industries that you are seeing higher incidents of addiction? And also for Dr. Andrews as well.

Ms. RUSSO. For me I can only give you anecdotal evidence. What I'm seeing is—the highest rate of addiction I'm seeing is in the health care industry, mainly because people who work in hospitals and clinics have access to drugs. So I deal with a lot of health care employers who have employees who are addicted. That's just my personal reaction.

Ms. BLUNT ROCHESTER. Great, thank you. Dr. Andrews?

Dr. ANDREWS. The available research we have suggests that the highest incidence that rates we are seeing are in the fields of construction, manufacturing, and mining. And I do not think it is coincidental that those are all fields that are physically demanding and sometimes dangerous.

Ms. BLUNT ROCHESTER. Thank you. My next question shifts to Ms. Allen. I want to really thank you so much for the leadership that your company provides, both for the products that you produce but also your person centered approach to management. And I was wondering if you could talk a little bit about the supports that you provide. As you talked about Sonny, you know, I wondered about what kind of infrastructure you have, whether it is an HR team, a really good HR team. You talked about the peer to peer and also just the culture, a family culture. But I was more interested also in are there specific supports that you provide. If you want to give it in writing later, that is fine too.

Ms. ALLEN. No, I will be happy to answer that. Thank you. One of the things that we have done is we work with some local social service agencies. We've worked with other businesses around the country to share best practices. And what we've done is we work with the social service agencies for the wraparound services for our employees. So if they have an issue we can refer them. We can help them find the help that they need hopefully.

We were talking at the break, one of the problems in our area is that the services are busting at the seams with the need and not

enough opportunity to provide the services. We work with counseling services in our community, we work with the healthcare industry, and we work with other businesses just to see what, you know, other avenues are out there to help our folks.

Ms. BLUNT ROCHESTER. Great. Thank you.

Ms. ALLEN. We also—one other thing, if I may, is we work closely with the Board of Prisons, both in West Virginia, in our area—and we're in Wheeling, which is the northern panhandle, so we work closely with the Board of Prisons in the Ohio system as well. And so we interact with them and hopefully can find reentering citizens that way.

Ms. BLUNT ROCHESTER. Thank you. And then my last question is really centered around the whole issue that Mr. Sablan and Ms. Fudge touched on in terms of the incidence in terms of people of color. I read recently a New York Times article that actually said that the opioid crisis is getting worse, particularly for black America. That was the title of this New York Times article. And in the beginning I think there was an under representation because many people of color were not being prescribed pain medicine. And now with fentanyl it seems to be on the rise. And so I was hoping that, whether it is Dr. Andrews, and then, Mr. Rhyan, if you would like to touch on that. And we have 30 seconds.

Dr. ANDREWS. I'll try to make this quick. Overdose and death among African-Americans is on the rise. It is now growing faster than it is for white Americans. This problem is exacerbated by the fact that African-Americans were under represented in Medicaid expansion states. What I mean by that is that those states that chose not to expand Medicaid have a higher proportion of African-Americans. So at a time when this rate is increasing rapidly they are more likely to be in places where they will not have access to care if they are low income.

Ms. BLUNT ROCHESTER. Thank you. My time is expired, but I would appreciate anything in writing as a follow up.

Thank you, Mr. Chairman.

Chairman WALBERG. I thank the gentlelady. Now I recognize the gentleman from Georgia, Mr. Allen.

Mr. ALLEN. Thank you, Mr. Chairman. And thank you so much for being with us and enduring some of these questions that you are getting. I feel like I have got to comment as far as the terrible tragedy yesterday. And I just pray that prayers continue to flow there because it is the only way that I know that we can try to—I mean it is the only way that I can deal with things like this. It is just horrible. It is evil at its worst and it is just terrible. And my strength comes from Mark 11:24, "Therefore I tell you, whatever you ask in prayer, believe that you have received it, and it will be yours." And of course that takes a tremendous amount of faith to do that. And there are hundreds of other verses. God promises that if we would just believe those that we could correct a lot of these issues that we are dealing and talking with here today. And that is just my belief and my value system. I cannot change you, I cannot change myself. I cannot change anybody. But— and as far as the ironic part of this is that we are talking about something that is an epidemic here that is highly illegal in this country. I mean, we cannot seem to obey the laws we have, whether it is im-

migration or drugs or whatever. So I don't know. You know, I think the answer is, you know, what makes up your DNA and what you believe.

To that extent, Ms. Allen—I hope we are related somewhere because, I will tell you, I was really impressed with—I am a small business owner and had to deal with a lot of these issues and had to deal with the drug situation. And, again, did it not from my—did it in a compassionate way and tried to help folks get well and get back to work. But as far as the percentage of your employees that have a drug problem, is it—I mean what—in your past, and you have got 300 employees now, what percent are really have an issue with this would you say?

Ms. ALLEN. Well, Congressman Allen, we believe—we don't ask the question necessarily. There is conversation, but we don't necessarily ask it. It is our estimation that between 20–25 percent of our total workforce has some kind of a checkered past.

Mr. ALLEN. Right, okay. So they have had to deal with this issue in the past?

Ms. ALLEN. Themselves. Their families I can't even speak to.

Mr. ALLEN. Is there any evidence that—obviously you are a great company—And like I said, I have 12 grandchildren and we do, I use a lot of your products.

Ms. ALLEN. Thank you so much.

Mr. ALLEN. Yeah, I mean it is the best babysitter in the world, let me tell you. But you have got a great company and obviously you care deeply for your employees and they care deeply for you and that company. And you have had an amazing track record in rehabilitation. And I don't know what, you know, those that you have lost that you haven't been able to save from this problem, but would the fact that you are able to give somebody a good job making a great product and the opportunity for them to give themselves the dignity and the empowerment that they deserve as a human being on this earth, would that have something to do with them recovering from this horrible addiction?

Ms. ALLEN. 100 percent, absolutely.

Mr. ALLEN. 100 percent? Yeah.

Ms. ALLEN. Absolutely it would. The ability to have a job and feel secure in having the ability to take care of yourself, let alone your family, to get out of homelessness, all those things require money and you get money from having a job. And so to provide somebody the opportunity to have the sense of pride and the sense of self-worth and the sense of dignity, to be able to walk home with a paycheck, that feels good, that feels really good to them. And for us to be able to provide that, we're proud of that. We're very proud of that. Are there failures? Absolutely. Does that stop us? No. We look for people who can fit inside our value system. And just because some people made a bad decision or a bad choice, doesn't mean they still aren't great people and have the opportunity to reprove themselves.

Mr. ALLEN. We all fall short, we all fall short.

Ms. ALLEN. Absolutely. Because we've all made bad decision.

Mr. ALLEN. Mr. Rhyon, do you have any research that—I got 20 seconds—any research that might help us with, okay, how do we

actually fix this? You know, what is the best way to deal with these things?

Mr. RHYAN. Yeah, I think, as I said in my oral and written testimony, looking at this both from a treatment and a prevention perspective is really important. And I think employers that can play a role in providing treatment and recovery services is important, but also thinking about how they can act on the prevention side, and really limiting the opioids that are going into their environment and also helping their employees not get an addiction before it starts.

Mr. ALLEN. Thank you all so much. And I yield back.

Chairman WALBERG. I thank the gentleman. Now I recognize the gentlelady from Oregon who has spent a lot of time recently listening to these concerns, Ms. Bonamici.

Ms. BONAMICI. I have. And thank you, Mr. Chairman. And I wanted to start also by making a comment, and with following up to Mr. Allen's comment, you know we have all been praying in our ways. We prayed after Sandy Hook, we prayed after Pulse, we prayed after Tamaqua Community College, we prayed after Las Vegas, after the church in Texas, and of course the nation is all praying, everybody in his or her own way after yesterday. But kids are still being murdered in schools. Prayers are not enough. And I want to align myself with Mr. Scott's call. And I don't always agree with Secretary DeVos, but I agree with her this morning. We have to have hearings to find out how we can keep our kids safe in school. I am a mom, my kids are grown, but I cannot imagine what those parents are going through.

So, thank you, Mr. Walberg. Yes, I have just had five listening sessions around northwest Oregon with health care providers, people in recovery, law enforcement, and of course employers. I appreciate so much of the testimony here today and understand that work and our personal lives are so intertwined. Ms. Allen, thank you so much for setting that example. We have a business in my district, Beaverton Bakery, that has a second chance program. They work with our drug treatment court. And when we acknowledged them recently I prepared for an onslaught of criticism, but the response was overwhelmingly positive. So I think we will see that as more and more businesses do what you are doing.

Mr. Rhyan and Dr. Andrews, you both mentioned drug disposal as important tools, and that is something that has come up in my listening sessions. There just are not enough options for people. It is one important step. There are not enough options for people to get rid of their unused prescription pills. So can you please elaborate about the role that employers could play in providing a solution? And briefly because I do have another question. Mr. Rhyan?

Mr. RHYAN. Sure. I think you can look at Walmart as a great example. And they have proposed offering these sites both for their employees and for customers as well. And so I think employers absolutely can step up to do that, because you're right, not all local police stations have this. I know many do, but certainly many don't.

Ms. BONAMICI. And not to interrupt, but a lot of my constituents don't feel comfortable walking in to a police station saying I want to get rid of my unused drugs. I have a significant Latino popu-

lation, minority populations. They are just not comfortable walking into a police station with drugs. So we have to have alternatives for people to get rid of those pills.

Dr. Andrews, do you have anything to add?

Dr. ANDREWS. I think that this is an incredibly important issue. Safe drug disposal must be an important component of prevention efforts around the opioid epidemic. I think that, you know, integrating safe disposal into places like pharmacies, primary care, places that are not either stigmatized or present criminal threats, and allow people to feel comfortable getting rid of those unwanted drugs is really key.

Ms. BONAMICI. Thank you. Those are logical. I want to move on—as the clock goes down. Mr. Rhyan, you mentioned parity for coverage of behavioral health. And one of the issues that has come up frequently is alternative treatments. We have at our Oregon Health Sciences University a great pain management clinic, but often times alternative treatments, whether it be physical therapy, massage therapy, acupuncture, they are not covered. And so they are not prescribed and instead opioids are prescribed. So are there good reasons for employers to make sure these alternative treatments are covered in the plans they offer? And how could we expand the number of employers who are doing that?

Mr. RHYAN. Yes, absolutely. Employers should be involved and engaged in the insurance that they're offering to their employees and making sure that these alternatives are available. I think we've realized the risk of prescribing an opioid for chronic pain and the risk of addiction that occurs from that is very costly to that employer. And so making these alternatives available has the potential to save that employer money and is a better option for the employee themselves.

Ms. BONAMICI. Dr. Andrews, anything to add?

Dr. ANDREWS. Yes. I would add to that there's research that suggests that opioids are not effective for chronic pain management and that we have to start funding both services as well as medications that are going to be more effective.

Ms. BONAMICI. Alternatives. And, Mr. Rhyan, you know, I have heard about sometimes fear of job loss or income loss. Somebody with a substance abuse disorder might delay or forego getting treatment. So how could comprehensive job protected paid leave allow workers to seek treatment and support those in their family who many need treatment?

Mr. RHYAN. I think both of those options are very important. The evidence that we've seen from Lorain County and the other work that we've done is that employers that offer those programs tend to see very positive results from those cases. And certainly I think you can give examples as well, that shows a strong benefit and is good for all parties.

Ms. BONAMICI. Thank you. And, again, Mr. Chairman, thank you so much, and Ranking Member, for holding this hearing. It has been very informative and I yield back.

Chairman WALBERG. I thank the gentlelady. And now without objection I would like to recognize for questioning, five minutes of questioning, the gentleman from Pennsylvania who does not serve on the Subcommittee but who is in the full Education Workforce

Committee and has a background in medical profession and has great interest in this issue, Mr. Thompson.

Mr. THOMPSON. Well, thank you, Chairman. First of all, I appreciate not being objected to.

Chairman WALBERG. I didn't hear objection.

Mr. THOMPSON. Okay. I am not going to raise one, so. And thank you to the panelists who are here. I mean this is the public health crisis of our generation. I have also conducted opioid roundtable listening sessions throughout my congressional district and continue to do that. I represent about a quarter of geographically the state of Pennsylvania, a lot of rural communities. The CDC, in October of 2017, published a report showing how disproportionately this is hitting rural America. This is hitting all populations, all households, all zip codes, all socioeconomic levels of living.

I would caution against a narrow focus on opioids, because what we need to be looking at is addictive behaviors. I have communities, and I heard these stories where it was opioids and then because of what happened with heroine and opioids and some of the things that were put into it, the number of deaths, the number of focus on it, that the users shifted, they actually went to the treatment, suboxone, and utilized that illegally. They have gone back to meth because of all the factors. Whatever we do, we cannot do a narrow focus, Mr. Chairman. We need to do this so it applies to all behaviors.

Most recently I met with folks from—some wonderful people that work in the prison system. They talked about this frightening thing called—and I am not going to go into it—but K2, which is—could not believe the stories they told with that. But some of the things I heard about though, was a lack of treatment. We have since the Great Society—there was a push back then to deinstitutionalize the Great Society. I think their push, the outlawing in 1965 of any kind of use of Medicaid in facilities larger than 16 people. That was a huge mistake. As opposed to improving those facilities so that they actually met needs, they just arbitrarily said you just can't go there. And I believe, as I talked with family members and people in the community, we have very limited options. We have drive-through treatment today, which doesn't work. And we need long-term treatment.

And I was very pleased, the Trump administration's actually was the first one since the Great Society of 1965 who encouraged the states to exercise their waivers for Medicaid to be able to, you know, to be able to use those in facilities that have more than 16 beds. That is what we need. In a rural part of America, which is where I am from, you know, it is small facilities. And we have very limited options.

And also, I am pleased with the support. Under President Obama we put \$1 billion into this battle through the *Cures Act*, and under President Trump, just last week, we put \$6 billion into this battle. You know, we need to continue to be attentive.

So workforce, like many national crises the opioid epidemic is multifaceted. We have taken steps to respond and I am really appreciative of your comments.

The President's Commission on Combating Drug Addiction and the Opioid Crisis released recommendations in November. And

while the Commission's recommendations were vast, the only notable recommendation related to workforce addressed the shortage and the lack of training for substance abuse and medical training professional.

So, very quick, in the time I have left, do you agree with the workforce recommendation by the Commission? And what further workforce recommendations were you anticipating? That is jump ball. Go for it, whoever would like to take that on.

Dr. ANDREWS. I think that training is absolutely key, particularly around safe prescribing of opioids, and particularly for physicians and other prescribers of drugs. We have a series of excellent guidelines that have been established by the CDC to help physicians make good choices about safe prescribing, but we need to do more in terms—

Mr. THOMPSON. But how about on the treatment side?

Dr. ANDREWS. Mm-hmm. Right.

Mr. THOMPSON. Because, you know, I understand responding to the crisis and preventing the problem.

Dr. ANDREWS. Oh, absolutely.

Mr. THOMPSON. But I am finding the key now really is—the key thing that we are not doing that we need to do is making sure that we have the long-term effective treatment to help people get, you know, get—once you are an addict I understand you always carry part of that, but how do we deal with that and help people live healthy lives post addiction?

Dr. ANDREWS. Well, I think every state in the country should apply for a waiver for the IMD exclusion.

Mr. THOMPSON. Agreed.

Dr. ANDREWS. And I think that we need to, you know, train licensed professionals to provide these services. We've been making strides towards that end, but there is more to be done.

Mr. THOMPSON. Thank you. Thank you, Chairman.

Chairman WALBERG. I thank the gentleman. And I would like to thank Mr. Rhyan, Ms. Allen, Dr. Andrews, Ms. Russo. Thank you for providing your insights to our panel today. A number of them talked to me on the way back to votes that they were so disappointed we just couldn't have carried it on, and schedules get in the way. One even said she is going to get the tape of it and see the ending. So you have been a great help to us and this is all a process that we go through.

Seeing no other members that have questions I now turn to Ranking Member Takano for his closing comments.

Mr. TAKANO. Thank you, Mr. Chairman. And I want to thank you again for hosting this important hearing, and the witnesses for providing their testimony.

The opioid epidemic, and substance abuse more broadly, has been felt in every corner of this country. The impact is never limited to just one individual, it affects families, friends, and even employers. More than half of adults struggling with substance abuse were employed full-time in 2012. In a recent survey from the National Safety Council found that 70 percent of employers have felt the negative effects of prescription drug usage, including absenteeism, impaired or decreased job performance, and near misses or injuries. If we are going to make any progress in addressing the

opioid epidemic and addressing substance abuse disorders in general, our workplaces must have policies that support affected workers.

Now as Ranking Member Sablan said, access to comprehensive health coverage is imperative for workers with substance abuse disorders. Efforts to rollback protections or reduce the quality of health coverage denies them the help they need to move towards recovery. Workers affected by substance abuse also benefit from strong workplace policies that prevent addiction, allow them to take time to seek recovery, and help them reenter the workforce.

As with many of the problems this committee seeks to tackle, preventative efforts will save lives. Employees who sustain work-related injuries and are treated within the workers' compensation system are often prescribed opioid pain medications. In 2011 more than 25 percent of cost from worker's compensation prescription drug claims were for opioid pain medications. Employers can take active steps to reduce the risk of workplace injuries that lead to opioid use. Injury and illness prevention programs require employers to work with their employees to proactively find and fix hazards. These programs required or encouraged by 34 states, including my home state of California, are proven to reduce injuries on the job.

At work, when employees do suffer from a substance abuse disorder they often need to take extended periods of time to seek treatment. But workers who fear losing their jobs or missing a paycheck may delay or forego needed treatment. Currently, eligible workers who take leave under the *Family and Medical Leave Act* for substance abuse treatment are protected from retaliation. Unfortunately, 60 percent of workers are not eligible for leave under the FMLA. What is more, workers who are actually eligible often cannot afford a missed paycheck. According to a 2012 survey, 46 percent of FMLA eligible workers did not take leave because they could not afford to take unpaid time off. Paid family leave, as provided under the *Family Act* can provide crucial support for workers seeking treatment.

Now, as we have recently seen, Republican proposals for paid leave, and we have actually seen Republican proposals for paid leave, and this is very encouraging. As we consider them, I think we should ask if these proposals would guarantee workers the ability to take leave for substance abuse treatment.

We also know that the opioid crisis and the substance abuse disorders in general can lead to people leaving the workforce. An estimated 20 percent of men's and 25 percent of women's decreased labor force participation between 1999 and 2015 can be attributed to the increase in opioid prescriptions. When we hear these statistics it becomes clear how important it is for our employers to implement policies that break down barriers for impacted workers trying to reenter the workforce. For instance, while there is wide use of workplace drug testing policies there is little evidence that they actually are effective. Likewise, employers should reconsider hiring practices and policies for those with a criminal record. Ban the box policies can ensure employers first consider a worker's ability to do the job.

To put it mildly, our country has had inconsistent responses to drug epidemics affecting our communities. But if we have learned anything, it is that we should try to rely on evidence base approaches to support those who are impacted. Strong sentiment and feelings of support are not enough. America's employers must step up to the plate and implement strong policies that support national efforts to address substance abuse.

Thank you again, Mr. Chairman, for this hearing. Thank you to the witnesses. And I yield back my time.

[The statement of Mr. Takano follows:]

Prepared Statement of Hon. Mark Takano, Ranking Member, Subcommittee on Workforce Protections

I want to thank the Chair for hosting this important hearing. The opioid epidemic - and substance abuse more broadly - has been felt in every corner of this country. The impact of addiction is never limited to just one individual. It affects families, friends, and even employers.

More than half of adults struggling with substance abuse were employed full-time in 2012. And a recent survey from the National Safety Council found that 70 percent of employers have felt the negative effects of prescription drug usage, including absenteeism, impaired or decreased job performance, and near misses or injuries.

If we are going to make any progress in addressing the opioid epidemic and addressing substance abuse disorders in general, our workplaces must have policies that support affected workers.

As Ranking Member Sablan has said, access to comprehensive health coverage is imperative for workers with substance abuse disorders. Efforts to roll back protections, or reduce the quality of health coverage, denies them the help they need to move towards recovery.

Workers affected by substance abuse also benefit from strong workplace policies that prevent addiction, allow them take time to seek recovery, or help them re-enter the workplace.

As with many of the problems this committee seeks to tackle, preventative efforts will save lives.

Employees who sustain work-related injuries, and are treated within the workers' compensation system, are often prescribed opioid pain medications. In 2011, more than 25 percent of cost from workers' compensation prescription drug claims were for opioid pain medications.

Employers can take active steps to reduce the risk of the workplace injuries that lead to opioid use. Injury and Illness Prevention Programs require employers to work with their employees to proactively find and fix hazards. These programs, required or encouraged by 34 states, including my home state of California, are a proven way to reduce injuries on the job.

At work, when employees do suffer from a substance abuse disorder, they often need to take extended periods of time to seek treatment. But workers who fear losing their jobs or missing a paycheck may delay or forgo needed treatment.

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For instance, while there is wide use of workplace drug testing policies, there's little evidence that they are actually effective. Likewise, employers should reconsider hiring practices and policies for those with a criminal record. Ban the box policies can ensure employers first consider a worker's ability to do the job.

To put it mildly, our country has had inconsistent responses to drug epidemics affecting our communities. But if we've learned anything, it is that we should rely on evidence-based approaches to support those impacted. Strong sentiment and feelings of support are not enough. America's employers must step up to the plate and implement strong policies that support national efforts to address substance abuse.

I thank the witnesses for taking the time to testify today. Thank you. I yield back my time.

Chairman WALBERG. I thank the gentleman, appreciate his words. This was an important hearing. This hopefully will lead to further considerations, hopefully will lead to compassionate responses, sensitivity to the issue of concerns on both sides, on the issue of employee with a need for something to deal with chronic pain, for the employee who has become addicted to a substance, an ability to look at their needs and find cooperative solutions. On the other side, to look to the employer, to make sure that we applaud the employers who are trying their best to find a way to work with the problem and see it as an opportunity to grow a family, or a tribe, as you mentioned, Ms. Allen, in your experience. That we encourage employers by allowing a great amount of latitude and flexibility, to work with their own employee group and not have a one-size-fits-all that sometimes becomes extremely costly and unproductive, but also have some framework in place that does the encouragement that is necessary to find solutions that at least go as far as possible in making things work.

I think as well, my colleagues would agree, that while we look at opioid heroine abuse, as was mentioned by Mr. Thompson, it is broader than that. Because if it goes from there, it will go to something else, and we need to be prepared for that as well.

And also in the process, I might also suggest that we develop a recommitment to a society that shares some common values that impact in a positive way our nation, our thought processes, and encourage decency and order, compassion and caring, and commitment to responsibility as well as accountability also.

It is a big challenge, but this country has met challenges before. I remember reading in history, over and over again, of times when our framers and founders ultimately locked horns and just could not come to a solution, knelt in prayer, ultimately got up and did things. Faith and works together make an impact.

So thank you for being with us today. Thanks to the Committee. And having no other thing to come before us, I declare it adjourned.

[Whereupon, at 12:41 p.m., the subcommittees were adjourned.]

